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THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO
PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION

Report on the question of the use of mercenaries as a means of violating
human rights and impeding the exercise of the right of peoples to self-
determination, submitted by Mr. Enrique Bernales Ballesteros (Peru),
Special Rapporteur, pursuant to Commission resolution 1990/7

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I. INTRODUCTION

1. On 9 March 1987, the Commission on Human Rights adopted resolution 1987/16, in which it decided to appoint a Special Rapporteur to examine the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination. Later, on 3 September 1987, it was announced that Mr. Enrique Bernales Ballesteros (Peru) had been appointed as the Commission's Special Rapporteur on the question of mercenaries.

2. Since then, the Special Rapporteur has submitted six reports to the Commission and the General Assembly giving an account of his activities, his visits to date to Angola, Nicaragua, the United States of America and Maldives, and methodological developments in the concept of mercenarism (as a generic term including all mercenary operations and the existence of a causal agent) and that of a mercenary (as an individual accountable at the level of execution).

3. On 8 December 1989, the General Assembly adopted resolution 44/81, in which it condemned mercenary practices aimed at overthrowing the Governments of States in southern Africa, and Central America and of other developing States and fighting against national liberation movements of peoples struggling for the exercise of their right to self-determination (para. 2 of the resolution). The General Assembly also requested the Secretary-General to report to it at its forty-fifth session on the use of mercenaries (para. 10).

4. The Commission on Human Rights, in turn, considered the Special Rapporteur's fifth report (E/CN.4/1990/11) and, on 19 February 1990, adopted resolution 1990/7, in which it took note with appreciation of the report of the Special Rapporteur and decided to extend his mandate for two years in order to enable him to submit further conclusions and recommendations (para. 8). It also requested him to submit to the Commission at its forty-seventh session a report on the question of the use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination, together with his conclusions and recommendations, and to submit a preliminary report to the General Assembly at its forty-fifth session under the agenda item entitled "Importance of the universal realization of the right of peoples to self-determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights" (para. 19). The Commission further requested the Special Rapporteur "to follow closely the process of ratification and the mode of application of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries and to use his good offices to encourage States to become parties to the Convention ..." (para. 13).

5. On 25 May 1990, the Economic and Social Council adopted decision 1990/222, in which it approved the Commission's decision to extend the Special Rapporteur's mandate for two years.

6. Pursuant to the above-mentioned resolutions and after sending communications to several States in connection with complaints concerning mercenary activities, the Special Rapporteur visited the Republic of Maldives, at the invitation of that country, to obtain substantiated information on the mercenary phenomenon and ascertain the position of the Government on the

mercenary invasion of Maldives. At the end of his visit, the Special Rapporteur presented to the General Assembly, on 8 October 1990, his preliminary report (A/45/488, annex) on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination. The Third Committee of the General Assembly adopted a draft resolution taking note with appreciation of the report, repeating its condemnation of the recruitment, financing, training and use of mercenaries, and considering that such acts are offences against all States and violate the purposes and principles set forth in the Charter of the United Nations.

7. The Special Rapporteur has the honour to submit to the Commission on Human Rights his seventh report on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination. The present report amplifies and updates the information received by the Special Rapporteur in fulfilment of his mandate under Commission resolution 1990/7 and also includes a section relating to paragraph 2 of Commission resolution 1990/75 of 7 March 1990.

II. ACTIVITIES OF THE SPECIAL RAPPORTEUR

A. Programme of activities

8. The Special Rapporteur visited Geneva from 4 to 7 February 1990 to present his fifth report to the Commission on Human Rights at its forty-sixth session and to hold consultations. He met representatives of Botswana, Colombia, Nicaragua, Nigeria, Romania, Spain and Sweden and received representatives of non-governmental organizations. He took the opportunity to decide on the general outline of his preliminary report to the General Assembly at its forty-fifth session.

9. On 13 March 1990, the Special Rapporteur wrote to the Minister for Foreign Affairs of the Republic of Maldives, accepting his invitation to visit the country under the terms of his mandate and suggesting that the visit should take place during the second half of June 1990. In a subsequent exchange of letters, it was established that the Special Rapporteur would visit Maldives between 18 and 23 June 1990, during which time he could freely interview persons convicted of mercenary activities against that country. An account of that visit is contained in chapter IV of this report.

10. The Special Rapporteur returned to Geneva from 31 August to 6 September 1990 to hold consultations and meetings and to draft the preliminary report which he was to submit to the General Assembly at its forty-fifth session.

11. On 8 October 1990 the Special Rapporteur presented his preliminary report to the Third Committee of the General Assembly. On the following day, he had the opportunity of holding meetings with representatives of Maldives (Mr. Hussein Manikfan and Mr. Ahmed Khaleel), Mozambique (Miss Carla Mucavi and Mr. Felipe Chidumo), Nicaragua (Mrs. Grethel Vargas), Nigeria (Mrs. Theresa Garuba) and South Africa (Mr. Chris Botha) regarding the various activities which he had undertaken in fulfilment of his mandate. The Special Rapporteur also availed himself of the opportunity to call on Mr. Javier Pérez de Cuéllar, the United Nations Secretary-General.

12. On 5 October 1990, the Special Rapporteur dispatched a letter to the Ministers for Foreign Affairs of all States Member of the United Nations in pursuance of Commission resolution 1990/7, paragraph 13, in which the Special Rapporteur was requested, in carrying out his mandate, to follow closely the process of ratification and the mode of application of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries and to use his good offices to encourage States to become parties to the Convention. The Special Rapporteur took advantage of that opportunity to try to interest the Governments of Member States in ratifying or acceding to the Convention, which will facilitate its prompt entry into force and enhance its effectiveness in helping to achieve the objectives of respect for State sovereignty, self-determination of peoples and stability of Governments to which the Convention aspires. The Special Rapporteur also requested the Ministers for Foreign Affairs to forward to him any views or suggestions which might assist in the application of the Convention.

B. Correspondence relating to the Comoros

13. In connection with the mercenary attack on the Islamic Federal Republic of the Comoros on 26 November 1989, the Special Rapporteur wrote to the Permanent Representatives of the Comoros, France and South Africa on 19 December 1989, requesting information under the terms of his mandate (see document E/CN.4/1990/11, paras. 26-28).

14. The Permanent Representative of France to the United Nations Office at Geneva replied on 26 January 1990, stating, inter alia, that:

"The pressure exerted by the French Government has yielded results. The head of the presidential guard and his officers left the Comoros on 15 December 1989.

"...

"To prevent the departure of Bob Denard and his armed group from creating a situation detrimental to the maintenance of stability in the Comoros, the legal authorities of that country called upon the French Government, which, by virtue of agreements concluded between the two countries, agreed to provide them with the requisite military assistance. The duration of this assistance will be determined by mutual agreement.

"As to Bob Denard's legal status in the French courts, it should be recalled that a warrant has been issued for his arrest on charges of conspiracy. He will be brought before a court as soon as he enters French territory ...".

15. The Special Rapporteur requested additional information in a letter dated 9 April 1990, to which the Permanent Representative of France replied by letter dated 14 June 1990, stating the following:

"My Government considers that the presidential election of 11 March 1990, which was won by Acting President Said Mohamed Djohar in the second round, has brought an end to the period of unrest which began in the Comoros with the murder of Ahmed Abdallah on 27 November 1989. France welcomes this development, which demonstrates the appropriateness of its action and which should be confirmed by the adoption of a new Constitution that will allow the establishment of a multiparty system and, eventually, the holding of legislative elections. As regards Mr. Bob Denard, a warrant for his arrest was issued in France in 1988. Furthermore, a criminal complaint relating to the murder of President Abdallah was filed with the French courts and is going through the normal channels."

16. The Special Rapporteur also received a reply from the Permanent Representative of South Africa to the United Nations Office at Geneva who, in a letter dated 21 February 1990, stated that:

"... The South African Minister of Foreign Affairs, Mr. R.F. Botha, issued a media statement on 4 December 1989 in which it was made clear that the South African Government would suspend all co-operation with the Comoros ...

"Furthermore, it was at South Africa's insistence that the mercenaries should leave the Comoros and at the request of the Comorian people that the South African Government offered to evacuate the mercenaries from the islands. With the exception of two, all the mercenaries left South Africa within 48 hours of arrival in Johannesburg en route to France. The remaining two were granted temporary residence in South Africa pending the outcome of negotiations relating to their return to France. South Africa was in close contact with the French Government during this period."

17. The Special Rapporteur again wrote to the Permanent Representative of South Africa on 4 April and 20 July 1990, asking for further details about the situation of the above-mentioned mercenaries. In a letter dated 12 September 1990, the Permanent Representative informed the Special Rapporteur as follows:

"I have the honour to bring to your attention that all the mercenaries except Col. Bob Denard left South Africa soon after arrival in South Africa for destinations in Europe.

"The Islamic Federal Republic of the Comoros formally requested South Africa to permit Col. Denard to continue to reside in South Africa. This request was made in anticipation of the outcome of the commission of inquiry into the assassination of the late President Abdallah. As Col. Denard is a French citizen, the matter was raised with the French authorities who similarly expressed the preference that Col. Denard be allowed to remain in South Africa on a temporary basis.

"In the light of these requests and in order to accommodate the legitimate concern of the Comoros Government and people that Col. Denard should be isolated from mercenary forces in Europe, an extension of Col. Denard's temporary residence permit was approved.

"I trust that the above explanation will clarify Col. Denard's temporary residence in South Africa."

18. On 19 December 1989, the Special Rapporteur wrote to the Permanent Representative of the Islamic Federal Republic of the Comoros to the United Nations, asking him for information on the facts because "this is a clear case of mercenary activity which should be denounced and combated". On 20 July 1990, he wrote to him again requesting further information on:

"... the attack perpetrated by mercenaries against the Comoros, the damage done, the manner in which this action was brought to end and the measures to be taken to protect the country's sovereignty ...".

19. Following a number of events which occurred in the Comoros during August 1990, the Special Rapporteur wrote another letter to the Government of the Islamic Federal Republic of the Comoros on 12 October 1990, in which he stated:

"However, international reports continue to highlight certain facts which hamper the normalization of the political situation in the Islamic Federal Republic of the Comoros, where Bob Denard led a mercenary attack during which President Ahmed Abdallah Abderemane was assassinated. My attention has been drawn to various reports of new developments in which foreign mercenaries appear to have again been involved."

C. Correspondence relating to southern Africa

20. On 20 July 1990, the Special Rapporteur wrote to the Permanent Representative of Angola to the United Nations, requesting information on:

"... the maintenance of an aggressive attitude by UNITA (União Nacional para a Independência Total de Angola) hindering the policy of clemency and national reconciliation pursued by the legitimate Government of Angola. The possibility that UNITA might still rely on mercenary forces for its military operations cannot be excluded ...".

21. The Special Rapporteur also sent a letter dated 20 July 1990 to the Chargé d'affaires of the Permanent Mission of Namibia to the United Nations, requesting confirmation that:

"... Namibia's independence and sovereignty are actually being respected and that no mercenary activity is being carried out on your territory on behalf of a third party to cause problems either for the Government of Namibia itself or for any other country ...".

22. The Special Rapporteur also wrote to the Permanent Representative of the People's Republic of Mozambique to the United Nations, pointing out that:

"Mozambique is one of those countries in southern Africa said to have been affected by this type of interference, and the Mozambique National Resistance (RENAMO) has been identified as a group which, with the assistance of third parties, has allegedly been supported by mercenaries

hired to carry out military actions and civil sabotage to the detriment of Mozambique and its people ... Accordingly, I should like to request up-to-date information from your Government on the situation in Mozambique, with particular reference to the activities of RENAMO and the possible presence of mercenaries among its forces ...".

23. The Chargé d'affaires of the Permanent Mission of the People's Republic of Mozambique to the United Nations replied on 8 August 1990 thanking the Special Rapporteur for his letter and appending four documents entitled: (a) Peace or Terror - A Crossroads for Southern Africa's Uprooted; (b) Mozambique - The Children of War; (c) Summary of Mozambican Refugee Accounts of Principally Conflict-Related Experience in Mozambique; and (d) Dumba Nengue "Run for Your Life".

24. On 18 October 1990 the Special Rapporteur acknowledged receipt and expressed his appreciation of the above-mentioned documentation from the Permanent Representative of the People's Republic of Mozambique and said that he hoped that he could continue to rely on the latter's valuable co-operation, that the correspondence between them would continue and that he would receive further information on the presence of mercenaries in Mozambique, in particular the involvement of foreigners in armed activities carried out by rebel groups.

25. Similarly, on 25 July 1990, the Special Rapporteur wrote to the Permanent Representative of South Africa to the United Nations Office at Geneva, stating that mercenary activities:

"... in recent years have affected independent African countries and in other cases they have taken the form of attacks and crimes against leaders of African liberation movements, especially the ANC (African National Congress) ... [They] have complained to the international community, stating that the Government of South Africa was involved in the recruitment, training and protection of mercenaries.

"... I venture to request your Government for detailed information about the gradual elimination by it of repressive policies against the black South African population under which ... mercenaries were used to maintain the policy of apartheid. I should also like to have information about the decisions adopted to institute judicial inquiries into the crimes committed against some ANC leaders, in which mercenaries were reported to have participated and the alleged knowledge of individuals in the South African Government about these and other mercenary activities ...".

26. In a letter dated 5 April 1990, the Special Rapporteur wrote to Mr. Nelson Mandela, Vice-President of ANC, explaining his mandate. He congratulated Mr. Mandela on his recent release and sought his co-operation, since there appeared to be corroboration of:

"... the fact that there is a close relationship between apartheid and the presence in Africa of mercenaries, who are instrumental in achieving the objectives of this heinous policy. It is therefore not surprising that several ANC leaders have fallen victim to mercenary attacks, even in European cities, to which the intimidation and criminal activities of those backing apartheid have spread."

27. The Special Rapporteur also sent a letter on 24 July 1990 to Mr. Zola S.T. Brweyiya of the Legal Department of the African National Congress in Lusaka, repeating the content of the previous paragraph and requesting additional information:

"... on the current course of events in South Africa and, in that context, on the status of the demands for justice in the cases of the ANC leaders who were assassinated by mercenaries presumably recruited by South African officials ...".

28. The Special Rapporteur received a letter dated 30 August 1990 from Mr. Brian Currin, National Director of Lawyers for Human Rights, a non-governmental organization based in Pretoria, who appended abundant documentation on alleged mercenary activities in South Africa. In a letter dated 18 October 1990, the Special Rapporteur acknowledged receipt and expressed appreciation of the documentation sent, which he considered most useful in helping him to analyse the most recent events and the prospects for democratization in that country. In a letter dated 5 November 1990, the same organization forwarded information on the acts of urban violence which had occurred in South Africa in August, September and October 1990.

29. On 18 October 1990, the Special Rapporteur sent a letter to the Legal Department of the African National Congress in which he reminded ANC of the need:

"... to have full and up-to-date information on the latest events in South Africa and, in particular, to know the viewpoint of the African National Congress (ANC) on the political reforms under discussion and the measures envisaged to ensure that mercenary activity of any kind is discontinued once and for all in South Africa."

D. Correspondence relating to Central America

30. On 11 April 1990, the Permanent Representative of Honduras to the United Nations Office at Geneva wrote to the Special Rapporteur, in reply to his letter of 21 March 1990, stating the position of the Honduran Government on the establishment of contra military bases within its territory, as well as the recruitment and training of mercenaries. He also referred to the Tela Agreements of 5 to 7 August 1979 adopted by the Central American Presidents, and to the meeting of those Presidents held at Montelimar, Nicaragua, on 2 and 3 April 1990. He stressed the fact that the Tela meeting had adopted a joint demobilization plan, which had been formally expressed in the agreement signed at Toncontin, Honduras, on 23 March 1990. He stated that it had been agreed to ask the United Nations Observer Group in Central America (ONUCA) and the International Support and Verification Commission (CIAV) to take the necessary steps to guarantee timely support for the process of demobilizing and disarming the members of the resistance, both inside Nicaragua and in other countries, by a completion date of 25 April 1990.

31. On 16 July 1990, the Special Rapporteur repeated his request for an update in a letter to the Permanent Representative of Honduras to the United Nations Office at Geneva, since:

"... 10 June 1990 was to have seen full demilitarization and the consequent closing of camps occupied by Nicaraguans in Honduran territory and an end to all hostilities ...".

32. The Permanent Representative of Honduras replied in a letter dated 15 August 1990, describing the facilities which his Government had made available to ONUCA. He also stated that the demobilization had proceeded very slowly during the early months of 1990. He indicated that agreement had been reached at the beginning of April 1990 to demobilize the two main Nicaraguan resistance groups still present in Honduras, comprising 2,607 persons. The demobilization process was deemed to have been completed on 28 June 1990. He added that the former members of the Nicaraguan resistance still in Honduras, together with their family members, had subsequently been concentrated in temporary camps under the supervision of CIAV, with operational support from the Office of the United Nations High Commissioner for Refugees (UNHCR) to co-ordinate the repatriation of the individuals concerned, which was expected to have been concluded by the end of 1990.

33. The Special Rapporteur also sent letters on 18 July 1990 to the Permanent Representatives of El Salvador and Nicaragua to the United Nations Office at Geneva, requesting information on the peace process in Central America and the positions of their respective countries on questions relating to his mandate. Similarly, in a letter of 16 July 1990, the Special Rapporteur wrote to the Permanent Representative of Costa Rica to the United Nations Office at Geneva, requesting information on the legal proceedings in respect of the La Penca incident, in which an attempt had been made on the life of Edén Pastora by alleged foreign mercenaries. To date, no reply has been received to these letters.

34. In a note verbale of 18 September 1990, the Permanent Representative of the Republic of El Salvador to the United Nations Office at Geneva transmitted to the Special Rapporteur the final document signed by the Deputy Ministers for Foreign Affairs of Central America at the second meeting of the Security Commission established under the Esquipulas II Agreement, held in San Salvador on 12 and 13 September 1990.

35. In a note verbale of 4 October 1990, the Permanent Representative of the Republic of El Salvador to the United Nations Office at Geneva, informed the Special Rapporteur that an alleged mercenary of Mexican nationality had been killed in action during a clash which had occurred on 26 September 1990 between forces of the Fifth Infantry Brigade and members of the Frente Farabundo Martí para la Liberación Nacional (FMLN).

36. In a letter dated 5 October 1990, the Special Rapporteur requested the Minister for Foreign Affairs of Nicaragua to provide information on any major substantive changes with respect to mercenary activities in Nicaragua. In his letter, the Special Rapporteur pointed out that:

"On the basis of the investigations carried out in 1988 and 1989, it can be asserted that the involvement of foreigners with mercenary characteristics in the Nicaraguan conflict is a fact which has been proven by both the United States courts and the Costa Rican courts, in the current trial for the La Penca attack. On the other hand, the military conflict in Nicaragua has ended, democratization is a reality and the Nicaraguan resistance has been disarmed and demobilized. Consequently, it is to be assumed that there are no more foreign mercenaries in the country."

In addition, the Special Rapporteur stated that he was willing to return to Nicaragua to hold talks with the new authorities there and assess the peace process at first hand.

37. In a letter dated 5 October 1990, the Special Rapporteur replied to the Minister for Foreign Affairs of the Republic of Honduras, thanking the Government of that country for its letter of 15 August 1990 reporting on the current situation regarding verification of the security undertakings contained in the Esquipulas II Agreement, the implementation of the joint demobilization plan agreed upon at the Tela Summit of August 1989, and the process of voluntary repatriation or resettlement of the members of the Nicaraguan resistance and their families, in particular those in camps on the border with Nicaragua. The Special Rapporteur added:

"In your letter you stated that it was hoped to complete the process of repatriating refugees and former members of the Nicaraguan resistance by the end of this year. The situation on the border with Nicaragua which had deteriorated on account of the military conflict in that country, would thus be fully restored to normal. I shall be going to Geneva shortly to prepare the report which I am to submit to the Commission on Human Rights at its forty-seventh session, in which I will give an account of the implementation of the peace agreements in Central America. Consequently, I would like to visit Honduras during the first half of December. This would enable me to conduct a series of meetings facilitating an objective assessment of how Honduras has been discharging its side of the agreements for demobilization, repatriation and normalization of the situation on its border with Nicaragua and how it has contributed to their implementation."

E. Correspondence relating to provisions of internal law for combating mercenary activities

38. In a note verbale of 12 September 1990, the Permanent Mission of Belgium to the United Nations Office at Geneva advised that:

"... the Ministry of National Defence has just indicated that no amendment has been made to the legal provisions and regulations relating to mercenarism, applicable to the armed forces, as set out in this Mission's note verbale (copy attached).

Enumeration of the legal provisions and regulations relating to mercenarism, applicable to the armed forces

Reference should first be made to the Act of 12 December 1817 which lays down the penalties to be imposed on anyone subject to military jurisdiction who encourages the desertion of individuals from the Army or Navy. Article 3 of this Act prescribes imprisonment for 'anyone who in any way encourages members of the armed forces to desert in order to join the Army or Navy of a foreign Power or who deliberately helps them to so desert'. Consequently only the recruiter may be prosecuted and the punishable act is classified as a crime. Unlike the Sovereign Prince's decree of 9 February 1815, which prescribes a penalty of imprisonment for anyone who enagages Belgian troops, the above provision was not repealed by the Act of 1 August 1979 concerning service in a foreign army or troop on the territory of a foreign State. The ministerial decree of

10 September 1974 setting out the regulations governing servicemen on indefinite leave (Moniteur belge of 8 November 1974) refers specifically to the enlistment of Belgian military personnel in a foreign armed force. Under article 5 of this decree, any serviceman on indefinite leave is prohibited from enlisting in a foreign armed force without authorization from the Minister of National Defence.

The legal basis of this decree is article 765, paragraph 1, of the co-ordinated laws on the militia of 30 April 1962 (Moniteur belge of 9 May 1962). This provision stipulates that the Minister of National Defence shall adopt the necessary measures to ensure the prompt recall, in accordance with the regulations, of military personnel on leave and the call-up of reservists. Any military personnel in breach of this provision may be punished and recalled to active duty for a period of 30 days.

Given its legal basis, article 5 of the ministerial decree of 10 September 1974 was not devised to combat mercenarism. Furthermore, since the entry into force of the Act of 1 August 1979, mentioned above, refusal to grant a serviceman on indefinite leave the authorization referred to in article 5 on the grounds that he has enlisted as a mercenary would be illegal, because such enlistment is now governed by article 3 of the Act of 1 August 1979, which prohibits the engagement of Belgian nationals to serve in a foreign army or troop on the territory of a foreign State. This prohibition is applied through a duly substantiated royal decree previously discussed in the Council of Ministers. In the absence of such a royal decree, the Minister of National Defence would substitute for the Council of Ministers, and refuse to grant a serviceman on indefinite leave authorization to enlist as a mercenary.

There are various legal provisions which indirectly penalize mercenaries who fail to honour their militia obligations. They would be classified as defaulters, absentees or deserters, as the case may be (arts. 1 (7 and 8), 6, 7, 65, 107 and 108 of the co-ordinated laws on the militia). Consequently, anyone subject to being called up or recalled for active duty who enlists in a foreign armed force is liable to be prosecuted as a deserter (arts. 65 and 107 of the co-ordinated laws on the militia, arts. 43-52 of the Military Penal Code). In addition, any Belgian serviceman who enlists in an enemy armed force fighting Belgium or an ally of Belgium in the same war commits an act of treason (art. 15 of the Military Penal Code).

With respect to the application of Additional Protocol I to the 1949 Geneva Conventions, the implementation measures which have already been or are being formulated by the Department of National Defence do not cover mercenaries. Since international law does not grant mercenaries the status of combatant and hence that of prisoner of war, the situation of these persons and their acts are primarily matters for the courts."

III. MERCENARY ACTIVITIES IN AFRICA

A. General aspects

39. The African continent has been one of the focal points for extremely aggressive and open mercenary activities. This phenomenon was a consequence of the desire to impede the struggles of the peoples of Africa for their right to self-determination. The decolonization process under way since the 1950s resulted in successive political independence and the establishment of new, republican States in Africa. Decolonization has enjoyed the constant support of the international community, in particular, the United Nations, which, through declarations and resolutions of the General Assembly and the Security Council, has on various occasions condemned colonialism, recognized national liberation movements and guaranteed the right of the peoples of Africa to establish independent republics. Nevertheless, in some cases decolonization was resisted by the European colonial countries, which delayed recognition of the independence of their former colonies. In the context of action against African independence, there were instances of armed resistance, organized by groups of colonial landowners and businessmen who, seeing their interests affected and unwilling to accept independence, resorted to forming armed bands and paramilitary groups to attack African national liberation movements.

40. The presence of mercenaries - and the increase in their criminal activities - are linked to resistance against the self-determination of African peoples; mercenaries are still being used today on the African continent to hinder the self-determination and sovereignty of independent African States. Such mercenary activities have been particularly common in southern Africa. There was intensive use of mercenaries during the illegal occupation of Namibia. Countries such as Angola, Botswana and Mozambique have reported criminal mercenary activities which undermined their self-determination, peace in their territories and the full enjoyment of human rights by their peoples.

41. In all these instances the Government of South Africa and its policy of apartheid were identified as responsible for the violence and military tension prevailing in southern Africa to the detriment of the peoples of the region. The accusations against the Government of South Africa included reports of the use of mercenaries, some recruited from the black African population and others in Europe, the Americas and Oceania. All these events have led to the deserved condemnation of the South African Government and its policy of apartheid by the international community and the adoption of economic sanctions by the United Nations, with the aim of forcing South Africa to repeal the system of apartheid; acknowledge self-determination for and full exercise of political rights by the black population of South Africa; cease its military aggression in the countries of southern Africa; and accordingly end the use of mercenaries, by means of which it has continually undermined the rights of the black population, independent States in the region, and members of national liberation movements.

42. In the context described, the Special Rapporteur has concentrated on studying cases in Africa of the use of mercenaries to prevent the peoples of a continent from exercising their right to self-determination. At the same time, other situations have been examined relating to the sovereignty of States in which the use of mercenaries for criminal ends and to destabilize

constitutionally established Governments has also been noted. In relation to self-determination in Africa, the Special Rapporteur has studied the situation in southern Africa, examining above all the reports received and instances in which the international community had objective information concerning mercenary activities against the peoples and countries of the region.

43. Previous reports of the Special Rapporteur follow political and social developments in southern Africa. As the international community is aware, since the second half of 1988 détente and peace have gradually come to this part of the African continent, with an easing of situations involving violence and military conflict, and greater emphasis on negotiation and political agreement as the most rational and effective means of resolving differences peacefully and affirming the right of peoples of self-determination. Peace-making and United Nations resolutions on the rights of African peoples have finally begun to gain ground. United Nations mediation, monitoring and supervisory machinery and procedures have played a fundamental role in this process.

44. Implementation of Security Council resolution 435 (1978) on effective independence for Namibia may be considered a fait accompli. South Africa has withdrawn from Namibian territory and respected the timetable for Namibian independence, SWAPO (South West Africa People's Organization) is fully exercising its rights within Namibia, and the first free elections have taken place to form a sovereign Government whose legitimacy is founded on the will of the people, as expressed in such elections.

45. Angola, a country whose people's self-determination has been undermined ever since its independence, due to the external hostility of South Africa and the internal resistance of UNITA, has entered a phase of détente in foreign relations. It has signed peace agreements with South Africa ending the military confrontations between the forces of the two countries along the border between Angola and Namibia. A similar situation may be observed in Mozambique. Nevertheless, centres of active resistance by the groups which have taken up arms internally - RENAMO and UNITA - remain in Mozambique and Angola respectively, and as a result there continue to be situations of armed violence, military confrontations and difficult negotiations directed towards the elimination of foreign interference, the ending of the war, national reconciliation and peace.

46. As far as South Africa is concerned, its Government's hostile activity against the régimes in Angola and Mozambique has ended and there are definitive signs of a change in South Africa's aggressive foreign policy towards the countries of southern Africa. Further, evidence could be adduced to suggest that the installation of the Government of President F.W. De Klerk has marked the beginning of a significant movement in South Africa towards détente and political negotiation which, if sustained and carried further, overcoming obstacles such as the dissensions between various ethnic groups within the black population, would lead to the end of apartheid and start the process of granting the black population the full enjoyment of their national, political and social rights.

47. It follows from the above that the final stage of the historical process of full decolonization and self-determination in Africa may come to a successful conclusion in the next few years. The peoples and countries of southern Africa are consolidating their national independence, and

South Africa itself has entered a stage which, despite resistance and violence on the part of far-right supporters of apartheid and incomprehension and mistrust among certain sectors of the black population, may mean the effective democratization of the country. It is obvious that the ending of the military conflicts and the signing of peace agreements in southern Africa are leading to a reduction in the presence of mercenaries in the region. Mercenaries played a fundamental role in the service of South African military aggression and expansionism. As military conflict ceases or becomes less intense, there has been less need for mercenaries who, in any event, seem for the time being to have withdrawn into South African territory, where they are reputedly working in co-operation with extreme right-wing groups to foment violence in the country in support of the apartheid system.

B. Angola

48. The Special Rapporteur visited the People's Republic of Angola in August 1988 in connection with complaints which had been received concerning the active presence of mercenary forces along the frontier with Namibia and inside Angola. The Special Rapporteur's second report, submitted to the General Assembly, referred at length to the situation in Angola. His subsequent reports to the Commission on Human Rights (E/CN.4/1989/14 and E/CN.4/1990/11) and to the General Assembly (A/44/526, annex) again referred to the Angolan question, providing an update on the positive developments within the framework of the tripartite agreements concluded by Angola, South Africa and Cuba. These agreements established peace between the first two countries and made it possible to begin the withdrawal of the Cuban troops based in Angola.

49. The Special Rapporteur has received no new reports of mercenary activities encouraged by South Africa against Angola, and therefore it can be maintained that the peace agreement signed by those countries and the cessation of military activity along the frontier with Namibia have made it possible for the mercenaries who had been operating in that area to withdraw. Nevertheless, peace within Angola has not yet been fully achieved, since UNITA guerrilla forces are continuing their resistance to the Government of Angola, creating a climate of collective insecurity which affects the lives and property of the Angolan population. The cease-fire agreements, the Angolan Government's policy of clemency and national reconciliation and the talks between the Government and Jonas Savimbi, the leader of UNITA, have not yet succeeded in ending the internal military conflict. The Special Rapporteur referred to this situation in his fifth report to the Commission on Human Rights (E/CN.4/1990/11, paras. 116 and 117).

50. The ongoing internal conflict in Angola requires the Special Rapporteur to continue examining the situation. The reports of military activity by UNITA not only allege that third countries provided military assistance to this guerrilla movement, but also that UNITA used mercenaries to provide military training to its forces and even involved them directly in the conflict. During the first few months of 1990, the military conflict between the Government and the guerrilla movement was very intense, especially in Mavinga, in south-eastern Angola, the strategic value of which lies in its proximity to Jamba, the guerrilla rebels' centre for operations.

51. Although the direct negotiations agreed to at Gbadolite in June 1989 have been formally suspended, both parties have been exploring the possibility of their resumption by means of statements which signify their abandonment of rigid positions. President Dos Santos has referred publicly to the possible establishment of political pluralism and other democratic reforms which could be adopted at the MPLA Congress in December 1990. For his part, Jonas Savimbi, the leader of UNITA, has also made statements in favour of the cessation of military operations and the recognition by his movement of the Angolan State on the basis of the Alvor agreements of January 1975. In any case, direct talks have in fact taken place, without recourse to mediation by Zaire. Nevertheless, the military conflict is continuing.

52. The ongoing military conflict, although attenuated by the obvious desire for a negotiated solution, is affecting the Angolan people. A considerable part of their territory is the theatre of the internal war, the authority of the State is called in question by the groups that have taken up arms, the military expenditure rules out the likelihood of any economic development programme and, finally, it is patently obvious that there is intervention which undermines the sovereignty of Angola, since the guerrilla movement could not keep going without foreign aid and arms which also come from abroad and without the presence of mercenaries who provide direct military assistance and training to UNITA.

53. Accordingly, the Special Rapporteur maintains his view concerning the existence of mercenaries in Angolan territory in connection with the military needs of UNITA. His central premise continues to be the need for complete and total peace in Angola, not only so that its people can obtain their full right to security, life and development, but also so that all mercenary activity will disappear from Angola, together with all foreign intervention.

C. South Africa

54. In all his previous reports, the Special Rapporteur has referred to complaints of mercenary activities in which the Government of South Africa appears to be directly or indirectly involved. In the Special Rapporteur's judgement, there is a cause-and-effect relationship between the policy of apartheid, which in itself constitutes a system of racial separation granting rights to some (whites) while denying them to others (blacks), and the violence which recurs constantly within South African territory, in the neighbouring countries and in other places where an organized anti-apartheid resistance exists.

55. In order to impose a political and social system based on racial segregation, the white minority which has invariably ruled South Africa has resorted to violence and crushed the freedoms of the black population. Many United Nations documents bear witness to the crimes committed by the governmental repressive forces and paramilitary groups organized by the extreme right wing. Analysis of the question of apartheid and the sanctions against the Government of South Africa which have been adopted by the United Nations does not fall within the mandate of the Special Rapporteur. Nevertheless, he has an obligation to refer to the methods and consequences of apartheid, to the extent that the South African Government resorted or consented to the use of paramilitary groups, including mercenaries, in order to undermine the self-determination and human rights of the black population opposed to apartheid inside and outside South Africa.

56. In this respect, few doubts exist as to the use of mercenaries by the South African Government. There is the case of Battalions 31 and 32 stationed on the Namibian frontier with Angola, both of which were used to crush the Namibian resistance and to intervene in the military conflict with Angola. The accumulated evidence points to a mercenary component in those battalions. As for ANC, several of its representatives were murdered in African and European countries by mercenaries hired to carry out such criminal acts.

57. The attribution of responsibility for these actions to organizations under the authority of the South African police or linked to it is based not only on ANC reports; the South African press itself has begun to publish revelations which confirm the active participation of mercenaries in criminal acts. In this way, the existence of "death squads" assigned to carry out terrorist acts against ANC representatives abroad has been made known; such was the case of Dulcie September, who was murdered in Paris in 1988 by mercenaries, according to the revelations of a Swedish national named Human, who confessed to ANC representatives in Zimbabwe that he had participated in the murder. Moreover, an ongoing judicial investigation in Johannesburg has revealed the existence of a secret unit (the Civil Co-operation Bureau) which is responsible for murders, arson, bomb attacks, assaults and intimidation directed against ANC members and others. The number of anti-apartheid activists who have been assassinated by unknown elements in the past decade is estimated at 50; recent investigations have demonstrated the participation of mercenaries and the involvement of a secret unit of the South African army in these criminal and reprehensible acts.

58. In other cases, mercenaries linked to organizations or recruited by various countries to fight in conflicts over the past few decades found a safe refuge in South African territory. Hence there is sufficient evidence to indicate that the South African Government not only used mercenaries in order to impose its authority and repress the anti-apartheid population of its own country and other African countries, but also gave protection to mercenaries involved in acts which are liable to prosecution in the courts of other countries in Africa and Europe.

59. The correspondence received by the Special Rapporteur from organizations such as the Independent Board of Inquiry into Informal Repression and Lawyers for Human Rights, which are directly concerned with reports of crimes committed in order to enforce apartheid as well as with enhancing the rights of the South African black population, contains a wealth of material that reveals the existence of a sinister network that employed, in the past with the open complicity of the police and recently in secret, the most perverse and inhuman forms of ill-treatment, repression and crime to impose the domination of the white minority in South Africa at all costs. The organizations complained of include the Askaris (police squads) and the Civil Co-operation Bureau controlled by military personnel. Members of these organizations have acted against representatives of the Council of South African Churches, the Conference of Catholic Bishops of South Africa, Archbishop Desmond Tutu, the Rev. Frank Chikane, etc. All these organizations are linked to forces of the State and are in turn connected with sectarian extreme right-wing groups implicated in criminal activities inside and outside South Africa.

60. As Brian Currin, the National Director of Lawyers for Human Rights, states, "no report on mercenary or death squad or paramilitary extrajudicial killings in South Africa can be complete without providing information about right-wing fascist organizations". These groups remain active and constitute a serious obstacle to détente and peace in South Africa. The phenomenon is even more serious if the growth of these organizations, some of which were formed early in 1990, is borne in mind. A by no means exhaustive list of racist organizations actively opposed to the ongoing process of abolishing apartheid and of détente in South Africa, and prepared to use violence, follows: Commandos of the Afrikaner Resistance Movement (AWB); Aquila; the White Freedom Movement (BBB); the White Front (BF); the White Security; the Flamingoes; the Boere-Weerstandsbeweging (BWB), alleged to be the armed wing of the Boer State Party (BP); the Boere Freedom Movement (BVB); the Boere Resistance Movement (BWB); Brandwag; the Congregation of Chosen People; the Bonnet Commando; Power Action Afrikaner Nationalism (MAN); the Odal Clan; the Order of the Boer People; the Order of Death, five of whose members were arrested at the end of 1989 for plotting to murder President De Klerk and three of his ministers; the World Apartheid Movement; the White Freedom Army; the White Commando; the White Wolves, etc.

61. It is important to point out that the rise in radicalism among the white minority has occurred since the election of Frederik Willem De Klerk as President of South Africa in September 1989 and the admission by the ruling National Party that the policy of apartheid had failed and that it was necessary to move towards a democracy that does not exclude any ethnic group. This new policy has been implemented since February 1990, and has seen developments such as the release of Nelson Mandela and other political prisoners, the permission given for the free return from exile of the President of the ANC, Oliver Tambo, the recognition of ANC and other political organizations which had been banned, such as the Pan Africanist Congress of Azania (PAC) and the Communist Party of South Africa and the beginning of a discussion on what the country's future constitutional system should be. In that discussion, black organizations have demanded that decisions should be taken openly and not through governmental and parliamentary machinery exclusively controlled by whites.

62. The negotiations undertaken between the Pretoria Government and ANC under the leadership of Oliver Tambo and Nelson Mandela are difficult and have their ups and downs, particularly on account of groups in the entourage of President De Klerk resisting a change in the system of apartheid. However, there are also problems within the black population, due to groups that challenge the leadership of ANC, as is the case with INKATHA, which is supported by a large proportion of Zulus. Even so, some improvement can be seen in the Government's conduct, since it has ordered the lifting of the state of emergency in the Orange Free State, the Transvaal, El Cabo province and, more recently, Natal province.

63. With regard to the use of mercenaries, paragraph 36 of the report of the mission dispatched to South Africa by the Secretary-General of the United Nations (A/44/960, Annex I) contains important information:

"The Government also appointed several independent commissions of inquiry to investigate allegations of misconduct by the security forces. The Harms Commission is investigating accusations that the South African Defence Force operates hit squads against apartheid opponents within and outside South Africa. In this connection, the activities of the Civil Co-operation Bureau, a military unit allegedly involved in assassinations, are the subject of this inquiry."

The Government's decision is of great significance, because it demonstrates a resolve to put an end to criminal methods, including the use of mercenaries, which directly or indirectly involved it in the commission of criminal acts.

64. The process which can lead to the abolition of apartheid in South Africa has begun, but it cannot be said that it reflects a national consensus. There is resistance and violence. The state of emergency has been lifted throughout the country, except in Natal province, where sharp racial clashes continue to occur. ANC has reported the presence in Natal of Battalion 32, which served in Angola, and has alleged that it includes mercenary elements. The Ministry of Public Order has indirectly admitted that foreigners were active in that military unit by acknowledging that Battalion 32 was indeed stationed in Natal, but that now they were all South African citizens. In view of the virulent reaction by far right-wing groups and the enlistment of paramilitary organizations, the possibility cannot be discounted that hired foreign mercenaries may be taking part in the violent actions which are still occurring in South African territory; in any case, however, if this hypothesis is true, President De Klerk cannot be held responsible for the situation, as there is tangible proof of his efforts to promote the democratization of his country.

65. Nevertheless, the ethnic violence between various black groups in South Africa may become an obstacle to the objectives of a national policy of egalitarian integration and the full exercise of the political and social rights of the entire population and its representation in the State. The fact that the ethnic confrontations between different groups of the black population are encouraged by the most sectarian organizations of the white minority cannot be disregarded; those organizations have declared that they will oppose any change in the apartheid system and they denounce the existence of tribes as a dangerous factor which militates against the unity of the South African State itself. The violence has caused more than a thousand deaths in the course of 1990 and there is no denying that it is hindering the anti-apartheid process in South Africa.

66. Be that as it may, the events which are currently unfolding in South Africa, and the international community's decision to maintain the sanctions against South Africa until the apartheid system is abolished, confirm the view which the Special Rapporteur has repeatedly expressed, namely, that apartheid is what is impeding the self-determination and human rights of the peoples of southern Africa. Mercenary activities, linked as they are to the use of repressive methods in order to impose racist policies which are contrary to self-determination, will disappear only when all the countries of Africa are fully sovereign and their peoples are guaranteed the full exercise of self-determination and the enjoyment of all democratic freedoms and rights.

D. The Comoros

67. In the previous report which the Special Rapporteur submitted to the Commission on Human Rights in February 1990 (E/CN.4/1990/11, paras. 128-132), reference was made to the coup d'état in the Islamic Federal Republic of the Comoros in which President Ahmed Abdallah Abderemane was overthrown and assassinated. The operation was carried out by Bob Denard and a group of 30 French and Belgian mercenaries, and was strongly condemned by the international community.

68. This condemnation and the immediate international isolation of the Comoros led to the failure of the coup d'état. In response to an appeal from the legitimate Government of the Comoros, France sent an army contingent which helped to restore sovereignty in the islands. Denard and his mercenaries left the country on 15 December 1989 on board a South African transport plane bound for Johannesburg. Bob Denard is a mercenary of French origin who took part in several mercenary operations against African peoples (Katanga in the former Belgian Congo, Benin, etc.), and has a case pending before the Chambre d'accusation of the Paris Court of Criminal Appeal.

69. In view of Denard's withdrawal to South African territory, the Special Rapporteur requested the Government of that country for information about his situation, bearing in mind the offence committed against the Comoros and the proceedings instituted against him under the French judicial system. In an initial communication of 21 February 1990 addressed to the Special Rapporteur, the Government of South Africa stated that Denard had been given temporary resident status, until such time as the question of his return to France was resolved. In response to a second letter from the Special Rapporteur, the Government indicated, in a communication dated 12 September 1990, that all the mercenaries from the Comoros had left South Africa for countries in Europe, with the exception of Denard. It stressed that Denard was in possession of a temporary residence permit pending the outcome of the investigations into his participation in criminal acts in the Comoros, and given the agreement of the French Government that he should remain in South Africa on a temporary basis and the concern of the Government and people of the Comoros that Denard should be isolated from mercenary forces in Europe. The South African communication reads as follows:

"The Islamic Republic of the Comoros formally requested South Africa to permit Col. Denard to continue to reside in South Africa. This request was made in anticipation of the outcome of the commission of inquiry into the assassination of the late President Abdallah. As Col. Denard is a French citizen the matter was raised with the French authorities, who similarly expressed the preference that Col. Denard be allowed to remain in South Africa on a temporary basis. In the light of these requests and in order to accommodate the legitimate concern of the Comoros Government and people that Col. Denard should be isolated from mercenary forces in Europe, an extension of Col. Denard's temporary residence permit was approved."

70. With regard to the operation carried out against the Comoros, the Special Rapporteur has maintained written contacts with the Government of France which, in response to an appeal by the legitimate authorities of the Comoros, had helped that country to regain its full sovereignty. In an initial communication of 26 January 1990 addressed to the Special Rapporteur, the Permanent Mission of France to the United Nations Office at Geneva stated that:

"France, desiring that the Comorian people should be able to exercise their fundamental rights and state their choices in a free and democratic consultation, has made every effort to secure the departure of Bob Denard and his men from the Comoros."

71. A second communication, dated 14 June 1990, indicates that there has been an arrest warrant out against Denard in France since 1988 and that a criminal charge has been brought in the French courts for the murder of President Abdallah. It also states that the French Government considers that, with the election of Said Mohamed Djohar as President, the period of disturbances which began after the murder of Ahmed Abdallah on 27 November 1989 has drawn to a close and that the political evolution of the Comoros should continue with the adoption of a new constitution establishing a multi-party system and, subsequently, with the holding of legislative elections.

72. The Special Rapporteur sent three letters to the Government of the Islamic Federal Republic of the Comoros, through that country's Permanent Mission to the United Nations, in order to obtain direct information on the events and to contribute, within the scope of his mandate, to ensuring that the people of the Comoros are guaranteed their rights to self-determination and sovereignty. The Special Rapporteur has also taken cognizance of note verbale No. 61/RFIC/UN/SM/89 of 15 December 1989, addressed to the Secretary-General of the United Nations, by which the Government of the Comoros reported the aggression against it and the restoration of the sovereign authority of the State. In the note verbale, the Acting President, Said Mohamed Djohar informed the Secretary-General that:

"due to the circumstances of the tragic death of our brother, His Excellency the late President Ahmed Abdallah Abderrmane, in my capacity as Acting President of the Republic, I appealed to the Government of the French Republic to assist us to assure the external security of the Islamic Federal Republic of the Comoros, in conformity with the provisions of the defence agreement between France and the Comoros. I am pleased to inform you that France responded favourably to my appeal and that on this day, the expatriate members of the Presidential Guard and their leader Bob Denard are leaving our country for good".

73. The Special Rapporteur has also taken cognizance of the statement made by Amini Ali Moumin, Permanent Representative of the Islamic Federal Republic of the Comoros, in the Third Committee of the General Assembly on 15 October 1990. This statement refers to the process of democratization and the establishment of a multi-party system initiated in the Comoros and the calling of presidential elections open to all political persuasions. In the presidential elections of 11 March 1990, Said Mohamed Djohar was elected

in the second round. The statement also refers to the report on the situation given by the new Head of State of the Comoros at the Summit Meeting of the Organization of African Unity (OAU) held at Addis Ababa from 9 to 11 July 1990, as follows:

"The situation created in the Comoros by the gang of mercenaries under the command of Bob Denard was, as you can imagine, extremely grave. I am happy to say that the incursion by the mercenaries in the Comoros is today no more than a painful memory. I am particularly gratified by this since I consider the problem of mercenarism to be a serious challenge to the sovereignty and stability of our States. This problem must become a major concern of our Organization, which must find appropriate ways and means of dealing with it and be ready to respond at all times."

74. In this statement, the President of the Comoros also draws attention to the need to reach agreements within the framework of the Indian Ocean Commission in order to prepare the countries of the area against attacks on their sovereignty, and he reiterates his country's desire to ratify or accede to all international instruments, in general, and African instruments, in particular, that ban the use of mercenaries.

75. The important statement by the Comoros to the Third Committee of the General Assembly also mentions a further attempt at aggression by mercenaries against the Comoros in August 1990, which failed because of the stout resistance put up by the population and the support given to the Head of State in preventing and condemning any attempt to destabilize the Islamic Federal Republic. The statement calls for international support for the Comoros in the following terms:

"We therefore appeal once again to friendly countries and to our Organization for appropriate measures to be taken to ensure that the Comoros are never again subjected to the scourge of mercenarism and that existing networks are dismantled throughout the world."

76. In conformity with the object and nature of his mandate, the Special Rapporteur considers that the Comoros should enjoy the full support of the international community, that the self-determination of its people and the sovereignty of its State should be guaranteed and its democratization and development programmes supported and that, in particular, the Commission on Human Rights should condemn very strongly the mercenary activities in that country and should issue a warning against any further attempt at aggression.

E. Mozambique

77. The decolonization of Mozambique in 1975 led to the establishment of a black-majority Government under the leadership of the Mozambican Liberation Front (FRELIMO) which was perceived as a potential threat to its interests by the then Government of South Africa and the racist régime of what was formerly Rhodesia. In Rhodesia, the white minority was involved in the establishment and the first armed actions of the Mozambican National Resistance (MNR, also known as RENAMO). The reason for Rhodesian involvement in the internal affairs of Mozambique appears to be retaliation for the assistance given by FRELIMO to the forces of Robert Mugabe during the war of independence and for Mozambican support for the sanctions decided against Rhodesia by the United Nations.

78. When Zimbabwe became a sovereign and independent State, agents of the Government of South Africa took over the training and equipping of the MNR forces. This led to a marked increase in regional tension which culminated in acts of aggression, sabotage and terrorism against the Government of the People's Republic of Mozambique. On 14 October 1981, a Mozambican Army patrol clashed with a group of saboteurs laying mines on a section of the Beira-Umtali railway, which is of vital importance for the country and links Zimbabwe with Mozambique's main port. Three members of MNR and three South African demolition and explosives experts died in the confrontation. On 7 December 1981, during a raid on the main MNR operations base in Garagug, officers of the Mozambican Army found minutes of meetings held between MNR leaders and South African officers.

79. A number of former members of the Portuguese secret police (PIDE) were also involved in setting up MNR. One of them, Orlando Cristina, was appointed secretary-general of the organization. Evo Fernández, who had succeeded in infiltrating the Portuguese student movement in the 1950s, became official spokesman for MNR in Europe. Another Portuguese national, Casimiro Monteiro, was made responsible for liaison between MNR and the South African security services. A number of Mozambican nationals recruited as members of MNR were paid by the Government of Rhodesia.

80. In 1983, the membership of MNR was estimated at between 5,000 and 10,000. In March 1984, Mozambique entered into an agreement, known as the Nkomati agreement after the place where it was concluded, with South Africa. Under that accord, each party undertook not to allow its territory to be used for the commission of acts of war, aggression or violence against the other party. However, the conclusion of the agreement did not in practice result in the dismantling of the MNR's bases on South African territory, the closing of its communications centres or an end to South Africa's financial and logistic support. In autumn 1986, MNR forces successfully penetrated deep into the strategic province of Zambézia and they carried out murderous raids in other regions of northern and central Mozambique. In August 1987, members of MNR summarily executed 380 people in Homoine, in the southern province of Inhambane. On 29 October 1987, an attack on a convoy 80 km north of the capital left 280 dead.

81. RENAMO has continued its attempts to sabotage the Mozambican railways and impede goods traffic from neighbouring countries through the ports of Mozambique. This has disrupted the international trade of Botswana, Malawi, Swaziland, Zaire, Zambia and Zimbabwe in recent years.

82. The dreadful toll of 15 years of war is more than 100,000 people summarily or arbitrarily executed or killed in armed clashes. To this must be added the deaths of 500,000 children under 5 years old, who would be living today if the civil conflict had not broken out. There are 4.6 million people who have been displaced internally or seriously affected by the violence in some way. The social and economic rights of the Mozambican people have also been seriously impaired; 2,049 schools, 720 health centres and 1,300 trucks which could have been used to transport foodstuffs have been destroyed. The number of Mozambicans who have had to go into exile or seek asylum abroad stands at 1,280,000.

83. In 1989, indirect contacts took place between the Government of Mozambique and MNR, through the mediation of President Robert Mugabe of Zimbabwe and President Daniel Arab Moi of Kenya. In December 1989, both thought that it would be possible to begin direct negotiations between the two parties.

84. On 14 March 1990, the MNR leaders rejected a peace plan proposed by the United States of America on the grounds that it involved recognition of the legitimacy of the present Government, its Constitution and its institutions. Nevertheless, it should be noted that the first official meeting between a member of the Government and a representative of MNR since the beginning of the civil conflict took place in Lisbon on 15 May 1990.

85. Subsequently, both sides requested the mediation of Italy; that mediation led to the opening of peace negotiations which resulted in a cease-fire agreement on 30 November 1990. It was also agreed that the implementation of the final peace agreement should be monitored by eight countries including Italy, the mediator country, Portugal, the former colonial power, the United States of America and the Union of Soviet Socialist Republics. The final composition and terms of the mandate of the monitoring team were to be decided during the round of negotiations scheduled for 18 December 1990.

86. The international community must realize the full seriousness of the Mozambican conflict and the need to end it by means of a peaceful, democratic solution, involving full respect for the human rights of the citizens of Mozambique and the sovereign and free exercise by its people of their right to self-determination. The cessation of the attacks against the civilian population appears to be the first step that needs to be taken in order to achieve a just and democratic peace as part of a process culminating in full respect for the rights of freedom of expression, freedom of association and freedom to participate in the political life of the country.

IV. MISSION TO THE REPUBLIC OF MALDIVES

A. Conduct of the visit to Maldives

87. In paragraph 18 of its resolution 1990/7 of 19 February 1990, the Commission on Human Rights recommended that the Special Rapporteur "... accept the invitation extended to him by the Government of Maldives to visit that country and carry out a thorough investigation of the mercenary activities to which it has been subject".

88. The Special Rapporteur fulfilled the task entrusted to him by the Commission by visiting Maldives from 18 to 23 June 1990, in response to the invitation extended to him by the Government of that country. During his stay, he had meetings with the President of the Republic, the Minister for Foreign Affairs, the Attorney-General, the Director of the National Security Council, the Permanent Secretary of the Ministry of Foreign Affairs and other senior officials. The Special Rapporteur also received private individuals who had asked to talk to him and heard in private, on the premises of the Ministry of Security and National Defence, the testimony of three people convicted by the Supreme Court of having taken part in the armed aggression launched against the country on 3 November 1988.

89. On 19 June 1990, the Special Rapporteur was received by Mr. Ibrahim Hussain Zaki, Permanent Secretary of the Ministry of Foreign Affairs, who described the investigations conducted into the 3 November 1988 armed aggression against his country. He said that the armed group which had disembarked that day at Male had consisted mainly of Tamils belonging to a Sri Lankan guerrilla group called the People's Liberation Organization of Tamil Ealam (PLOTE), whose leader Uma Magswaran had wanted to set up a puppet régime in Maldives to facilitate his illegal arms and drug trafficking with Sri Lanka. The guerrilla group had been contacted by a man called Luthufy, a Maldivian businessman living in Sri Lanka who wanted to become the Maldivian strongman. Other Maldivian citizens, friends of Luthufy, had taken part in the aggression.

90. The investigation had revealed that the group of attackers had landed at Male on the date in question in two boats which had left Sri Lanka a few days earlier. On landing, they had tried to seize control of government buildings in the capital city but had encountered fierce armed opposition. There had been heavy fighting in which 17 people had been killed and an unknown number injured. The group had later decided to withdraw and had re-embarked in the boats in which they had arrived, taking with them 28 hostages including the Minister of Transport and Navigation.

91. In response, the Government of Maldives had sought emergency assistance from a number of friendly countries and had finally accepted an offer of help from the Indian Navy, which had immediately dispatched a number of forces to the area and had managed to apprehend the fleeing attackers on the high seas and to release the hostages. Nine of the hostages had died and many others had been wounded by their captors or in the fighting that had preceded the attackers' surrender to the Indian Navy. The survivors had been taken to Male and handed over to the Maldivian authorities, which had launched an investigation and put the prisoners on trial. Large quantities of weapons had also been seized on the boats used by the attackers.

92. The Permanent Secretary believed that some or all of the financing for the attack might have come from PLOTE, which at the time had had the necessary resources. Later, the organization had split into two factions which had accused each other of involvement in the attack on Maldives.

93. As a result of the aggression, the Government of Maldives had strengthened its security system by expanding its armed forces to 1,500 men and improving communications. Naturally the increase in security spending had adversely affected the country's economic development.

94. Lastly, the Special Rapporteur reiterated orally to the Permanent Secretary his request, already made in writing to the Government, that he be allowed to talk privately to as many Tamil prisoners as possible. The Permanent Secretary assured the Special Rapporteur that his Government would do all it could to make that possible, although there were major logistical difficulties since the prisoners were being held on different islands which were very far away from each other.

95. The Special Rapporteur was then received by Mr. Ahmed Zahir, the Attorney-General, who described the armed aggression as having been launched by the Tamil group from Sri Lanka (PLOTE) and led by a man called Vasanthy. The group of attackers had consisted of 68 Tamils and three Maldivians. He believed that the attack had failed because Vasanthy had died in the very

first moments of the fighting. He said that Vasanthi had been well trained in military strategy in Lebanon and India. Magswaran, identified as PLOTE's leader, had been found dead on a Colombo street some time after the coup attempt against Maldives.

96. Turning to the involvement of three Maldivian citizens in the attack, the Attorney-General also identified Luthufy as the key figure. He said that Luthufy had planned to seize power in Maldives and hand over one or more islands to PLOTE to use as a military training centre while facilitating the illegal entry of weapons, drugs and commandos into Sri Lanka.

97. All the Tamil and Maldivian attackers taken prisoner had been tried by the Supreme Court, which had found them guilty of entering Maldivian territory illegally on 3 November 1988 and forming an armed group which had launched a grave attack on the independence, sovereignty and territorial integrity of the Republic. Seventeen people had been killed in the attack and an unknown number injured, and considerable damage had been done to Maldivian public and private property. Such conduct had therefore been classified, in accordance with the Maldivian Penal Code, as offences against the State, treason and sedition, attempting to overthrow the national Government, serious disruption of public order, use of firearms resulting in death and injury, hostage-taking, illegal entry into and departure from the country, attacks on property, etc. Some of those brought to trial had been sentenced to the death penalty, although that had later been commuted. All of them had received custodial sentences ranging from 16 to 28 years. They were now serving their sentences under an open prison régime since they had been confined separately to remote islands of the archipelago. As a result the prisoners, who were very young - some of them even adolescents - enjoyed freedom of movement on the islands to which they had been confined, mixed with the local population and were even working to provide for their needs.

98. The Attorney-General told the Special Rapporteur that the prisoners had not benefited from legal counsel or unofficial defence counsel during the trials. Islamic law, on which Maldivian positive law was based, only allowed the accused to defend himself, without the help of a lawyer.

99. In connection with the reference in the Special Rapporteur's preliminary report to the Third Committee of the General Assembly (A/45/488, annex) to the lack of legal counsel for those accused of participating in the invasion of Maldives, the Permanent Representative of Maldives made the following clarification:

"The legal system of the country, as stated in the report, is based on the Islamic Shariah and the terrorists were tried according to the prevailing law of the land. The customary practice is for the plaintiff and the defendant to state their cases in the presence of a judge who shall pass sentence based on the evidence presented to him".

In this connection he added:

"the legal treatment received by the PLOTE prisoners was no different from that available to the citizens of the country. They were neither discriminated against nor privileged. They were not denied access to legal counsel".

100. The Attorney-General also described the prisoners as mercenaries, since they had been an armed group of foreign nationals, financed by PLOTE to overthrow the legitimate Government of Maldives.

101. Later, the Special Rapporteur received a journalist who had requested an interview with him without his name being revealed. He said he had received secret death threats and had been detained for nine days in the National Security building, where he had been interrogated about his political and professional ideas and activities. He said he would have to appear in court, although he was unaware of the charges against him. Apparently he had published views in an opposition periodical in which he had criticized some members of the Government, alleging corruption and nepotism in certain government circles and the torture of a number of detainees for political reasons. He stated that freedom of expression was seriously curtailed, that freedom of political association was non-existent and that it was compulsory in the country to be a Muslim, religion being used for political purposes. He himself felt threatened.

102. With regard to those detained because of the events of 3 November 1988, he said that they had suffered maltreatment, including torture, during interrogation prior to their trial. He said that at least one of the Tamils - photographs of him in chains had been published - had died as a result of the torture. The Special Rapporteur was unable to confirm any of the points in this statement. The prisoners interviewed denied having been tortured or knowing of any of their number who had died as a result of torture.

103. On 20 June 1990 the Special Rapporteur was received by Mr. Anbaru Abdul Saltar, Director of the National Security Council and Deputy Minister of National Security, who explained the various mercenary acts of aggression suffered by his country. At the beginning of the 1980s the President's brother-in-law tried to overthrow the President with the help of 10 British mercenaries hired for that purpose. The aggression of 3 November 1988 was a complete surprise to the country and its intelligence services. The coup was reportedly financed by Luthufy and the Tamil guerrilla organization PLOTE, and 80 of its members living in the Sri Lankan jungle were recruited. They were transported by sea from Sri Lanka to Male, where they landed at about 4.15 a.m., and, firing their weapons, tried to take over the National Security Council headquarters and the presidential residence. Although well-armed, they were repulsed by the Maldivian armed forces - numbering about 120 at that time - and, after armed clashes lasting about 12 hours, they decided at about 6.30 p.m. to retreat in the boats which had brought them. He stated that some of them were obviously well trained for war, having undergone combat training both in Lebanon and in India. They varied in age from 18 to 28 years. Of the 80 Tamil participants, 67 were taken prisoner.

104. The Maldivian Government requested assistance from friendly Governments and finally accepted that provided by India. On the same day, at 7.30 p.m., the first contingent of Indian troops arrived at Male airport, by which time the attackers had already withdrawn. Indian warships then pursued and captured the attackers at sea. The prisoners were placed at the disposal of the Maldivian authorities. The President appointed a fact-finding team of four ministers to carry out an investigation. Major Ahmed Zahir took charge of the interrogation of the detainees, who spoke only Tamil, for which reason interpreters had to be procured, and the investigation lasted approximately five months. Apparently only one of the accused requested the assistance of a

defence lawyer, a request to which the Supreme Court acceded. All are currently serving their sentences which involves deprivation of liberty. They are permitted to meet with their families, receive medical assistance, read and listen to the radio; a few of them have been sent to other islands.

105. The Director of the National Security Council said that his defence forces had been significantly increased since the attempted coup d'état, a joint security force having been set up consisting of members of the police force and fire brigade.

106. The Special Rapporteur was subsequently received by Mr. Fathulla Jameel, Minister for Foreign Affairs, who described the attack suffered by his country on 3 November 1988 as a "terrorist" and "mercenary" attack aimed at overthrowing the lawful Government. He acknowledged that the Tamil members of the attacking force had not been the usual soldiers of fortune - their personal motives may have been different - but evidently the PLOTE leaders had arranged with Luthufy to be rewarded in kind for participating in the attempted coup d'état, if successful. Specifically, PLOTE would have received half of the Maldivian arsenal, two Maldivian islands where they could set up Tamil training camps, and two tourist resorts which would have been operated for the purposes of financing their struggle in Sri Lanka, with the Luthufy Government turning a blind eye to the smuggling of arms between Maldives and Sri Lanka.

107. With regard to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, adopted by the General Assembly by its resolution 44/34 of 4 December 1989, the Minister stated that his Government was studying the text with a view to the Maldives signing it. As to domestic legislation, he had doubts about the adoption of specific anti-terrorist legislation which would include mercenarism as a terrorist offence, or about the revision of certain articles of the Penal Code.

108. The Minister said that, in his view, despite the recently adopted security measures, his country continued to be vulnerable to extremist attacks by international terrorists and sophisticated mercenaries, whether or not combined with the illicit traffic in arms and drugs, which were so abundant in that region. He did not, however, rule out the possibility that certain Tamil groups might try once again to take over Maldives in order to use its territory as a sanctuary and an arsenal for attacking Sri Lanka, some 400 miles away.

109. On 21 June 1990 the Special Rapporteur was granted an audience by the President of the Republic, Mr. Maumoon Abdul Gayoom, who expressed his thanks for the support given by the United Nations to his country, which belonged to the category of small island States. He indicated that the aggression of 3 November 1988 had been a surprise and a bitter experience, since his country was very peaceful, its society was homogeneous, there were no ethnic or linguistic differences and no drug trafficking had been detected.

110. He stated that, in the face of the aggression suffered at the hands of the Tamils belonging to PLOTE, his Government had requested assistance from other friendly Governments, and India had immediately responded by sending to Male the first contingent of troops, which had arrived at 7.30 p.m. on the same day, by which time the attackers had already withdrawn from the city.

111. Although national security had been considerably reinforced, the President of the Republic pointed out that the vulnerability of Maldives as a small State left his country under constant threat. In his view, the United Nations should assume the obligation to give due protection to small States from external threats and acts of interference in their internal affairs. He said that the United Nations should promote the adoption of measures at the international, regional and bilateral level so that, when those States so requested, they would receive the necessary assistance in strengthening their security. Thus, in pursuance of Article 99 of the Charter, the Secretary-General should pay special attention to monitoring the security situation of small States, as indicated in paragraph 4 of General Assembly resolution 44/51 of 8 December 1989.

112. The Special Rapporteur then went to the offices of the Ministry of Security and National Defence, where he was able to interview, in private and individually, the three Tamils who were serving sentences for participating in the events of 3 November 1988. Even though the Special Rapporteur had a number of times requested, both in writing and orally, an opportunity to interview the greatest possible number of prisoners convicted on those grounds, the Government made only the three individuals referred to available for interviewing by him. The Government of Maldives has repeated that that was due purely to reasons of logistics, security, the extent of the geographical area involved and the fact that the Special Rapporteur's visit coincided with that of a foreign dignitary whose security demanded priority attention.

113. The first prisoner interviewed identified himself as Balamurali, alias "Vasu", a native of Sri Lanka and 22 years of age. According to his account, he was a student in his country when he was contacted by Vasanthi, who told him about PLOTE and its revolutionary goal of attaining independence for the Tamil people. He joined PLOTE, and in the course of two months he passed through a number of PLOTE camps in northern Sri Lanka, where he received training in the use of weapons and was given food and clothing. He claims that he was never given money by PLOTE. Then, at a particular point in time, Vasanthi ordered him, together with 80 companions at the PLOTE camp, to board two vessels at Mullikalam beach, Sri Lanka, and sail for an unknown destination. After two days at sea, Vasanthi informed them that they were going to land in Maldives using force, which was what indeed happened after four days at sea. However, he himself was unable to disembark as he was unwell and running a high temperature, and he therefore remained on the vessel that had transported him and his companions to Maldives. Subsequently their vessel sailed from Male, and the occupants were then detained on the high seas by Indian warships and taken back to Male, where they were interrogated by Indian civilians - or perhaps soldiers - in a room in which there were also Indian and Maldivian soldiers. He was not subjected to torture in the course of the interrogation, though he alleges that he was handcuffed and that his legs were tied together with a chain one foot long. He signed a written statement and, after a period of seven months, he was brought before the Supreme Court on the charge of having killed 17 people and having committed other offences against property. He challenged the accusations in question, which were not in keeping with the text of his statement, and requested legal assistance, which he was denied. He was ultimately sentenced to 15 1/2 years' imprisonment, and he began to serve the sentence in the island-prison of Gamaadhoo, subsequently being transferred for six months to an island where he was free to live side by side with the island's inhabitants. Two months ago,

he was taken back to Gamaadhoo prison, where he is now located together with 40 Tamil companions. He requested a presidential pardon or, as an alternative, that he should be returned to the island where he had been permitted to live freely, but his request was in vain. He corresponds intermittently with his family in Sri Lanka.

114. The Special Rapporteur then heard Padmanadam, alias "Patrick", who said that he was a Sri Lankan student of 21 years of age who had joined PLOTE in 1986 and received military training both in India and in his own country. He stated that he had never received money from PLOTE but had been given food and clothing. At a certain point in time he had embarked, together with 80 companions, on two fishing vessels, without any of the individuals concerned being told their destination or what the purpose of the exercise was. When they reached Male he was ordered to disembark with a group of 12 men, carrying a mortar in a sack, and they were assigned the task of keeping the local population away from the site where the armed confrontations were occurring. After a while, their chief ordered them to withdraw and they went back on board the vessels; he was ultimately detained, together with his companions, on the high seas by Indian warships. Once he had been taken back to Male, he was blindfolded and handcuffed, and then interrogated while being subjected to oral threats, but not physical violence. He was forced to sign a written statement in Tamil and English, and the Supreme Court sentenced him to 15 years' imprisonment. He requested the services of a lawyer, which he was denied. Until 28 September 1989 he was serving his sentence in the island-prison of Gamaadhoo, and since 1 October 1989 he has been serving his sentence on a small island on which he is obliged to work under the supervision of the governor of the island. He maintains that he has been unable to correspond with his family, and says that he wishes to study.

115. Subsequently, the Special Rapporteur heard Nandakumar, alias "Salim", who said that he was a Tamil student of 24 years of age and a native of Sri Lanka. He said that he had joined PLOTE in 1987 and that he had received military training in India and Sri Lanka and had lived at PLOTE camps, PLOTE having met all the needs of the camp residents and provided them with a small amount of pocket-money. He was ordered to sail for an unknown destination, together with other members of his organization. Their chief, Vasanthy, told them that they were going to take part in a training exercise, and they were not informed until later that they were going to land in Maldives. He was assigned a mortar, which he fired twice at a building from which armed resistance was being offered. He was later ordered to withdraw to the vessels, since it was feared that Indian troops might arrive. The vessel on which he fled was subsequently rammed by Indian vessels and sank, resulting in the death of three of his companions. He and his remaining companions surrendered and were taken to Male, where their hands were tied with cords, they were blindfolded and their feet were shackled. He was interrogated by Indians speaking Tamil, under the threat of being handed over to the population so that he could be stoned if he did not co-operate in the investigation. He maintained that the Indian interrogators had suspended him by handcuffs and then beaten him in order to intimidate him. After the interrogation, he added, they had forced him to sign a self-incriminating written statement. He was sentenced to 17 years' imprisonment by the Supreme Court, which denied him legal assistance when he was brought before it. He had begun to serve his sentence in the island-prison of Gamaadhoo and was subsequently deported to a small island.

116. Once he had heard the prisoners whom the Government had placed at his disposal, the Special Rapporteur once again emphasized to the Government that he should have access to as many prisoners as possible so that he might interview them. He was assured that all possible steps were being taken to meet his request, but was also informed that from a logistical point of view it was very difficult to do so, since the prisoners were dispersed on islands at a great distance from the capital. Security arguments were also put forward, since the Prime Minister of India was coming to Sri Lanka the following day on an official visit. However, some of the prisoners interviewed stated that there were approximately 40 prisoners in the island-prison of Gamaadhoo, near Male, and the Special Rapporteur therefore indicated that he was willing to travel to the island in question in order to interview them.

117. On 23 June 1990 the Special Rapporteur interviewed another journalist, who, requesting that his name should not be used, expressed concern at the frequent threats directed at journalists who voiced political criticism. According to him, freedom of the press is seriously restricted in the country and there is frequent manipulation by the Government, apparently extending to news reports on the Special Rapporteur's visit itself. He asserted that the group which had carried out the attack on 3 November 1988 was composed of very young revolutionary students belonging to PLOTE, the leaders of which had been paid by Luthufy and other Maldivians, who had ordered the students to attack Maldives, giving them no choice in the matter. Once captured, they had been handcuffed, tied up with ropes, blindfolded and subjected to abuse from a mob. He maintained that many of them had been tortured in the course of the interrogation, and that there had been a rumour that one individual had even died as a result of torture. The judicial process to which they had been subjected had been flawed, since there had been no public access to the hearing and the accused had not been provided with legal assistance. Lastly, he asserted that some of the individuals convicted were serving their sentences in the island-prison of Gamaadhoo, while others were apparently in a clandestine prison on the island of Dhoonidhoo. The Special Rapporteur repeats that he has no evidence to support these claims.

118. After thanking the Maldivian Government for its invitation and for the co-operation extended to him so that he could carry out his mission, the Special Rapporteur left the country late on 23 June 1990. The Special Rapporteur also wishes to acknowledge the valuable assistance consistently provided by the UNDP Office at Male, which provided him with all the physical infrastructure required in order to ensure that his mission would be successful.

B. Observations on the situation in Maldives

1. The nature of the 1988 attack

119. The main purpose of the Special Rapporteur's visit to Maldives was twofold: on the one hand, to evaluate on the spot the circumstances which had caused this country to be the victim of an attack of a mercenary nature on 3 November 1988; and on the other, to assess the security situation and the conditions guaranteeing the self-determination of its people and to determine whether this country is vulnerable to situations jeopardizing its self-determination and territorial sovereignty.

120. With respect to the first question, it can be seen from the report on the visit that Maldives suffered an attack from outside which took the country by surprise and which would have had major implications for its sovereignty. If the unexpected armed attack had achieved its objectives, the Government of Maldives would have been overthrown and replaced by a de facto one acting in accordance with the economic and political ambitions of a Maldivian national named Luthufy. In order to attain his goals, Luthufy had contacted a Tamil guerrilla group from Sri Lanka, known as the People's Liberation Organization of Tamil Ealam (PLOTE).

121. There is sufficient evidence to assert that Luthufy financed the armed expedition against his own country, providing resources for the leaders of PLOTE, in particular Uma Magswaran, to acquire weapons, recruit men and charter ships, thus organizing an expedition whose military objectives could easily have been achieved, given that Maldives has a very small military. Moreover, there is also evidence to indicate that if the attack had succeeded militarily, this would have resulted not only in the installation of a puppet régime in Maldives, but also in significant territorial losses. Part of the agreement with PLOTE had involved ceding two Maldivian islands, on which PLOTE would have established Tamil military training camps, two tourist resorts to finance the Tamil struggle against the Government of Sri Lanka, and facilities to carry out, from Maldives, illicit trafficking in weapons and drugs, to the detriment of Sri Lanka.

122. From the point of view of international law, the operation in Maldives was grave in itself, and had far-reaching implications. In the first place, armed aggression was used in an attempt against the legally constituted Government. In the second place, an internal conflict in a third country (Sri Lanka) was exploited in order to involve a guerrilla group from that country in the attack on Maldives. Thirdly, the sovereignty of Maldives would have been severely compromised by territorial concessions to the Tamil guerrilla group. Fourthly, the operation involved an agreement to tolerate hostile and illegal actions against Sri Lanka from the Maldivian archipelago, which is approximately 400 nautical miles from the coast of Sri Lanka. Fifthly and lastly, dangerous tension was created in this area of the Indian Ocean, giving an international dimension to the internal conflict between Tamils and Sinhalese in Sri Lanka, with illicit trafficking in weapons and drugs and the potential militarization of an area where Maldives, Sri Lanka and India are all close together.

123. The failure of the expedition was due to the unexpected military resistance encountered, to the death of one of the leaders, named Vasanthy, to ignorance of the military objective on the part of the attackers, as the Special Rapporteur was able to verify, and to the retreat and flight of the attackers when they feared that the Maldivian Government would call for outside assistance in the emergency, as in fact it did. However, the failure of the expedition against Maldives does not obviate the need to point out the grave repercussions which would have ensued if it had succeeded. It also calls for reflection on the potential dangers in an area where ongoing, unresolved internal tension threatens to spread or might be used by political or economic interests of third parties, public or private, located in the Indian Ocean region.

124. Maldives is a sovereign State and a full Member of the United Nations. Everyone must respect its self-determination and its sovereignty. Under the principles of international law and of the Charter of the United Nations, the attack on Maldives, in which 68 Tamils and 3 Maldivian nationals took part, is to be condemned. It would have been unacceptable for a puppet government to be installed, and a Tamil bridgehead established in Maldives from which attacks could have been carried out on Sri Lanka, in line with the military and national objectives of the Tamil rebels in that country. The Special Rapporteur expressed this point of view during his visit to Male, at the same time avoiding giving an opinion as to the national rights of the Tamils or on the legitimacy of their political and military struggle in Sri Lanka. Theoretically it can be maintained that an ethnic, national, religious or other group which comes together and forms a political or military resistance movement in its country, can point to de facto situations, the historical background and even legal arguments as constituting a legitimate basis for such action, which would cause it to be recognized outside the country as an insurrectional or national liberation organization.

125. There is no need to go into the question of the legitimacy of such internal action. But such a group may not assign, let alone lend, its military capability in order to become entangled in military or other adventures prejudicial to the sovereign rights of a country which is not its own and is not involved in the internal conflict to which the group or organization is a party. A situation like this does not enjoy the protection of international law, and for that reason the action against Maldives by the Tamil group PLOTE was to be condemned. Responsibility naturally falls on the three Maldivian nationals who planned the operation, but also on the Tamil group PLOTE, which may not adduce in its defence the situation of the Tamils in Sri Lanka and their national resistance movement there.

2. The mercenary component in the attack on Maldives

126. When the attack on Maldives took place, the Government charged that it was the work of Tamil mercenaries financed by Maldivian nationals. The capture of the vessels in which the unsuccessful invaders had fled by the Indian Navy, which had been called in by the Maldivian Government itself, confirmed that they were indeed Tamils and that they might be mercenaries. Given the danger to the self-determination of peoples which is posed by the presence of mercenaries in any type of conflict, national or international, verifying this point was one of the principal goals of the Special Rapporteur's visit to Maldives.

127. The Special Rapporteur was interested in determining the status of the attackers who were imprisoned so as to ascertain the mercenary character of the attackers on the spot. As to the judicial proceedings brought against them, the Special Rapporteur had to base himself chiefly on the report of the Attorney-General. It was ascertained from this source that the attackers were tried, in accordance with the Maldivian Penal Code, for offences against the State, treason and sedition, attempting to overthrow the national Government, serious disruption of public order, use of firearms resulting in death and injury, hostage-taking, illegal entry into and departure from the country, attacks on property, etc. Some of them were sentenced to death, but the death penalties were commuted, and all of them received custodial sentences of between 16 and 28 years. But from the same source it was learned that they

had been tried through interpreters, since the accused spoke only their own Tamil language, and that they had had no defence counsel. On the latter point, the Government of Maldives has provided a clarification which is reproduced in paragraph 99 above.

128. Some 40 Tamils, potentially classifiable as mercenaries, were sentenced to imprisonment. The Special Rapporteur was able to interview only three of them. The Maldivian authorities maintained that since they were confined to various remote islands of the archipelago, it would be difficult and costly to bring them together in a single place or to have the Special Rapporteur travel to each of the islands. In addition, they adduced reasons of security, owing to the visit of the Prime Minister of India to Male during the same period. Despite these perfectly understandable explanations, the Special Rapporteur feels bound to state that his inquiries would have been more thorough if he had been able to interview a larger number of prisoners.

129. In any event, on the basis of the interviews which he did carry out, and the information supplied by the Maldivian authorities themselves, it may be assumed that the attackers who were captured and confined were similar in one respect: they were all Tamil youths belonging to the organization PLOTE and recruited to take part in a domestic struggle against the Government of Sri Lanka. When the invasion took place, they did not know where they were going, nor that they would take part in a hostile act against Maldives. They had not deliberated and taken a decision of their own to involve themselves in the invasion of Maldives, nor did they receive any pay for doing so. Consequently, in the circumstances described and in the light of the provisions of article 47 of Additional Protocol I to the Geneva Conventions of 1949, the Tamil youths who took part in the invasion of Maldives cannot be considered mercenaries. The same conclusion would be reached if the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, adopted by the General Assembly by its resolution 44/34 of 4 December 1989, had entered into force, which is not yet the case. Their conduct should be judged in terms of the infringement upon the sovereignty of a foreign State and the toll in lives and material damage, even if their responsibility may be considered limited, given the circumstances surrounding their participation in the criminal act which international law condemns.

130. Notwithstanding the above considerations, the invasion of Maldives did have a mercenary component, but it was confined to the Maldivian nationals who financed the expedition to satisfy their own ambitions for economic and political power, and most particularly the leaders of PLOTE who willingly engaged in mercenarism by accepting money, weapons and promises of territorial compensation in exchange for forcing a group of their own Tamil guerrillas to become an army invading a foreign country. Here we find all the elements that typify mercenary activity, with no mitigating circumstance to diminish the responsibility of the Tamil leaders of PLOTE who wilfully engaged in mercenarism. The fact that the economic and territorial rewards promised would subsequently serve the Tamil national cause does not alter the mercenary essence of the operation which they organized and directed against Maldives.

131. The Special Rapporteur considers that the responsibility of the Tamil leaders of PLOTE is aggravated by the fact that they used the Tamil cause and diverted it from its goals in organizing a mercenary operation. Without going into an analysis of the internal situation in Sri Lanka, the Special Rapporteur submits that the Tamil guerrilla groups, whether or not

their cause is legitimate, and even more so if they claim to be a national liberation movement, may not interfere in the affairs of third countries. The situation is made more grave, and their action is stripped of any justification, if they use the armed section of their movement to contract for and provide mercenary services.

132. An equally important fact about Maldives is that the country was genuinely affected by the 1988 attack and its aftermath: firstly, because it was drawn into another country's conflict; secondly, because its extreme vulnerability became evident; and thirdly, because a poor country with scant resources was forced to increase its expenditure on military defence, thereby reducing the resources for public services and development programmes. In any event, the question under discussion should be of concern to the international community: a country such as Maldives, like all small States, is intrinsically vulnerable and is further endangered when strategically located or when there are conflicts going on nearby. Both conditions are met in the case of Maldives: its strategic position in the Indian Ocean is of major importance, and there is increasingly violent military action in the conflict in Sri Lanka between the Tamil minority and the Government. There is clearly a risk that this conflict might be internationalized, and if this were to happen, the sovereignty of Maldives would again be in danger.

V. EVOLUTION OF THE CONFLICT IN CENTRAL AMERICA

133. On the basis of reports by the Government of Nicaragua concerning mercenary activities in Nicaraguan territory and against Nicaragua, the Special Rapporteur included this topic within the purview of his mandate from the Commission on Human Rights. His third, fourth and fifth reports (E/CN.4/1989/14, A/44/526 and E/CN.4/1990/11) referred at length to this question and provided information obtained and verified during his visits to Nicaragua (December 1988) and to the United States of America (July 1989).

134. Those reports clearly showed that the Central American region was indeed suffering the consequences of an armed conflict which was most intense in Nicaragua and El Salvador, but was continuing to spread and engulf the whole region. The Special Rapporteur paid particular attention to the Nicaraguan conflict, characterized by armed resistance to the Sandinist Government on the part of opposition groups.

135. This conflict lasted for virtually the entire decade of the 1980s, claimed about 50,000 lives and caused substantial material damage to Nicaragua. Its frontiers with Costa Rica and Honduras were also affected militarily, because military forces of the Nicaraguan resistance were stationed in those strategic areas. The frontier with Honduras was the most severely affected, because of persistent military clashes all along the border, and because of the installation of camps for members of the resistance, relatives and refugees within Honduran territory.

136. In his earlier reports, the Special Rapporteur also described in detail the role of foreign mercenaries hired by the resistance (contras) to take part in activities detrimental to the sovereignty of the Nicaraguan State and to its population. In addition, he referred to the international network enabling mercenaries to use the territory of various countries to obtain funds and weapons, and carry out acts of sabotage against Nicaraguan installations.

The aforementioned reports contain information on United States intervention in providing financial support to the resistance forces. They also contain information on the so-called "covert operations" permitting the participation of foreign mercenaries hired to assist the contras and to commit acts of sabotage against the sovereignty of Nicaragua.

137. But those reports also refer at length to the efforts by the Central American Presidents to find a negotiated political settlement to the conflict. The Esquipulas II, Alajuela, Costa del Sol, Tela and San Isidro de Coronado agreements reached between August 1987 and December 1989 contain the details of a comprehensive demobilization and peace plan whose implementation was intended to resolve all existing claims. In particular, the Esquipulas II agreement - the understanding being that all aspects had to be fully implemented - enjoyed the support of the international community and was explicitly accepted by the United States Government. The United Nations made a special contribution to its implementation through CIAV and ONUCA.

138. The Special Rapporteur can inform the Commission on Human Rights that the peace agreements signed by the Central American Presidents have basically been implemented, and that the conflict in Central America is over as far as Nicaragua is concerned. Indeed, the cease-fire has been effective and has been observed. The Sandinist Government kept its word to hold free elections in the presence of international observers. They were held in February 1990 and were won by the opposition candidate, Mrs. Violeta Barrios de Chamorro, to whom President Daniel Ortega handed over power two months later. The members of the resistance, for their part, have laid down their arms, and the Government of Honduras has reported that there are no more resistance camps along the border with Nicaragua. Demobilization has therefore been achieved, while the process of repatriating Nicaraguan families is well under way, under the supervision of CIAV and UNHCR.

139. In addition, amnesty laws have been promulgated, and Nicaragua has begun a process of national reconciliation. The main stumbling-blocks here are the natural mistrust between groups formerly locked in military combat, and the need to rebuild the economy of a country devastated by a long, bloody military conflict.

140. The Special Rapporteur has received no further reports on mercenary activities in Nicaragua. Nevertheless, he has written to the new Government to request an official account of the new situation in Nicaragua, thus closing the chapter on the reports which Nicaragua, as a sovereign State, made concerning mercenary activities affecting its territory and its inhabitants (see paras. 33 and 36 above).

141. In any event, the trials held in United States courts, and the trial now under way in Costa Rica concerning the criminal attack at La Penca, clearly show that individual mercenaries were active in the conflict in Central America, serving or participating in covert operations supported by influential groups in the United States establishment. Although the conflict is over, the judicial evidence of mercenary involvement should encourage the international community to reiterate its rejection and condemnation, and its policy of preventive legislation against any type of mercenary activity.

142. Although the Central American conflict is over in Nicaragua, internal conflicts are continuing in other parts of the region; such is the case with El Salvador and the ongoing armed political violence in Guatemala. In this connection, the Central American Presidents have continued their efforts to achieve a peaceful settlement of all disputes. This was the purpose of the Antigua meeting in June 1990, the meeting of the Security Commission established under the Esquipulas II Agreement held in San Salvador on 12 and 13 September 1990, the presidential declaration of October 1990 on the need for a "peaceful and democratic solution in El Salvador", and the recent presidential summit meeting held at Punta Arenas, Costa Rica, from 15 to 17 December 1990.

VI. PRESENT STATUS OF THE INTERNATIONAL CONVENTION AGAINST THE RECRUITMENT, USE, FINANCING AND TRAINING OF MERCENARIES

143. The International Convention against the Recruitment, Use, Financing and Training of Mercenaries adopted by the General Assembly in its resolution 44/34 of 4 December 1989 confirms the judicial character of the many United Nations resolutions and declarations condemning mercenary activities. As stated in the preamble, such activities constitute offences and any person committing an offence of this kind should be either prosecuted or extradited. In addition, the Convention broadens the scope of the international regulations on the subject since, pending its entry into force, the main juridical benchmark under international treaty law continues to be article 47 of Additional Protocol I to the Geneva Conventions of 1949, which is limited to international armed conflicts and excludes mercenaries from the benefit of being considered prisoners of war. The formulation of broader, more comprehensive and more precise international regulations updated to take account of the forms which mercenarism has assumed in recent years with the aim of overthrowing Governments and undermining the constitutional order or territorial integrity of States highlights the importance of this new multilateral instrument and the necessity and desirability of its prompt entry into force.

144. Article 19 of the Convention provides for its entry into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations. By 28 November 1990, the Convention had been signed and ratified by Suriname. In addition, Seychelles has acceded to it. These two States have thus completed the process signifying their consent to be bound by the new treaty.

145. It should also be noted that the Convention has been signed by the following States: Italy (5 February 1990), Zaire (20 March 1990), Nigeria (4 April 1990), the Congo (20 June 1990), Maldives (17 July 1990), the Ukrainian Soviet Socialist Republic (21 September 1990), Morocco (5 October 1990) and Uruguay (20 November 1990).

146. In accordance with the mandate expressly entrusted to him by paragraph 13 of Commission on Human Rights resolution 1990/7, the Special Rapporteur has approached the Ministers for Foreign Affairs of all States Members of the United Nations in order to interest their Governments in ratifying or acceding to the Convention. This would both facilitate its prompt entry into force and enhance its effectiveness in achieving the aims of respect for State sovereignty, self-determination of peoples and the stability of lawfully constituted Governments.

147. The Special Rapporteur reiterates his conviction that the prompt entry into force of this new international instrument will assist in the unequivocal identification of situations involving mercenarism, the effective prosecution and punishment of persons committing this offence, preventive co-operation among States parties, a clear determination of the competent jurisdiction in each case, and the application of extradition where appropriate. It should not, however, be forgotten that, in parallel to the entry into force of the Convention, States continue to have an obligation to act in accordance with the norms of customary international law and the general principles of international law applicable in this area.

VII. DRUG TRAFFICKING AND MERCENARIES IN COLOMBIA

148. In his fifth report to the Commission on Human Rights, the Special Rapporteur referred to reports he had received on criminal association between gangs of drug traffickers and mercenaries (E/CN.4/1990/11, paras. 122-127) with the aim of providing military training to groups, also hired by gangs of drug traffickers, in order to form armed units to protect their unlawful activity, destabilize the Government and practise a violent policy of intimidation, attacks and crimes against the population.

149. One year after that report, the Special Rapporteur is obliged to revert to this subject, since the evidence gathered by members of the Colombian public and the investigations conducted by official organs of the Colombian Government have produced conclusive proof that foreign mercenaries have been hired by the so-called Medellín Cartel with the aim of training explosives experts, training and assigning arms-smuggling operations to squads of killers, and providing general military advice to Cartel chiefs.

150. Investigations confirm the participation of mercenaries in attacks such as those committed on the DAS (Administrative Security Department) building, in which 63 persons died, and on the daily newspaper El Espectador, the blowing up of Avianca aeroplane 502 in full flight and the destruction of the HK 1803 aircraft, and the attack on the newspaper Vanguardia Liberal. They also corroborate the involvement of mercenaries in targeted attacks such as that committed against Governor Antonio Roldán Betancur, in a context in which drug-trafficking violence was linked with and amplified political violence. In this connection, it should be recalled that drug traffickers were involved in the assassination of Luis Carlos Galán, Liberal Party leader, which was followed by the murder of another two leading politicians who were candidates for the office of President of the Republic - Bernardo Jaramillo Ossa of the Patriotic Union, and Carlos Pizarro Leongomez of the M-19 - although in the latter two cases the participation of drug traffickers has not been fully proved. In any event, there is an obvious link between drug trafficking and murderous violence in Colombia, and it has been established that professional mercenaries have been hired with sinister motives.

151. The presence of mercenaries in Colombia dates back to 1988 and 1989. Investigations conducted by DAS have established that, in April 1990, a Bogotá magistrate issued arrest warrants against five British mercenaries - Peter Stuart MacAleese, Brian David Zankins, Dean Shedly, John Owen and Andrew Gibson - who were accused of working in training camps and being implicated in massacres of peasants in a banana-growing area in northern Colombia. According to DAS, these mercenaries formed part of a London-based organization of military instructors known as "Jungle Commando". The same

source holds these mercenaries responsible for the increase in violence in Colombia: "There is no disputing the fact that the further escalation of violence is largely due to the instruction given to the drug traffickers by the mercenaries, which has resulted in indiscriminate terrorism being practised against the banking system, private enterprise, Government bodies and leading public figures". According to these investigations, it was Rodriguez Gacha, a powerful member of the Medellin Cartel, who hired British and Israeli mercenaries to train armed groups in the service of the Cartel and to introduce arms and explosives smuggling.

152. Other investigations have also revealed that mercenaries of Israeli origin participated in training courses to provide instruction in the use of altimeters and remote-control devices in detonating bombs. According to these sources, a mercenary called Yair Klein gave this explosives course at the "El Delirio" estate in Puerto Boyacá. According to DAS, individuals trained by Klein participated in attacks against aircraft. It is further reported that Klein gave a course on concealing explosives and that there were other Israeli mercenaries forming part of his team: Teddy Melwick, Abraham Tzadaka, Arik Ajek, Mike N. This group also seems to be linked to an operation for smuggling arms purchased in Israel through the island of Antigua. DAS was responsible for identifying this group of mercenaries, who were also hired by Rodriguez Gacha and Pablo Escobar Gaviria, the strongmen of the Medellin Cartel. Some sources also mention mercenaries of Spanish origin, but without offering any precise identification.

153. As can be seen, the presence in Colombia of mercenaries, linked with criminal drug-trafficking activities is a proven fact of the utmost seriousness. Moreover, it is evident that mercenaries are involved not only in acts infringing the exercise of the right to self-determination of peoples but also in individual criminal conduct, offering their professional services, at a price, to engage in unlawful acts in any part of the world where they are hired. In Africa, their particular mode of operation has been and is to associate with armed gangs and Governments acting against the self-determination of African peoples and seeking to undermine their sovereignty and destabilize their Governments. This is the classic form of mercenarism and the one which so far has brought attention, condemnation and repudiation from the international community. However, events such as those which have occurred in Colombia must also be studied and condemned, since they reveal the existence of professional mercenaries who, against payment, have no hesitation in engaging in criminal activities, lending military support to the sinister aims of the drug traffickers, participating in attacks and involving themselves in drug- or arms-trafficking operations. Such acts must further be regarded as an assault against State sovereignty, as in the case of Colombia, and they also constitute an attempt to destabilize the constitutional Government and a serious infringement of the life, security and freedom of the population. The international community cannot ignore the gravity of these acts and must denounce and condemn them.

VIII. ACTIVITIES OF IRREGULAR ARMED GROUPS AND DRUG TRAFFICKERS ADVERSELY AFFECTING THE ENJOYMENT OF HUMAN RIGHTS

154. Pursuant to Commission on Human Rights resolution 1990/75, the Special Rapporteur has to address the consequences of acts of violence committed by irregular armed groups and drug traffickers for the enjoyment of human rights. This is a rider to his report on the subject of mercenaries which is justified not only by formal reasons but also by the alarming

increase in violence committed by irregular armed groups and drug traffickers in many countries and the links between them, as referred to in the preamble to resolution 1990/75. Another element in this linkage which the Special Rapporteur would like to mention is mercenary activities; there thus emerges a complex criminal association acting both domestically and internationally and creating situations with various destructive consequences, since these activities can both undermine the self-determination of a people, impair the sovereignty of a State or the stability of a legitimate Government, destroy the economy of a country and involve atrocities and crimes directly violating the human rights of peoples and individuals.

155. It is true that many of these topics receive specialized treatment in various United Nations bodies working to prevent crime or trafficking in drugs and psychotropic substances. Nevertheless, international obligations in respect of matters relating to or affecting the protection, promotion and enjoyment of human rights and fundamental freedoms are inescapable, and a commitment to honour and protect the unrestricted observance of such rights is a moral and legal imperative. Consequently, it is not inappropriate to the specific subjects dealt with by Special Representatives, Special Rapporteurs and working groups of the Commission on Human Rights that they should refer in their reports, as requested by resolution 1990/75, to the activities of irregular armed groups, regardless of their origin, and of drug traffickers whose crimes and atrocities adversely affect the enjoyment of human rights.

156. At the present stage of development of international law, it is agreed that States bear primary responsibility for the life, freedoms and security of individuals and that States should be condemned and penalized when human rights violations falling within their responsibility and competence occur. This is a correct concept which should be upheld and, as a natural corollary, strengthened by respect for the human being, his primacy vis-à-vis the State and the observance of democratic principles. Nevertheless, and without prejudice to the State's obligations, the intricate social and political realities of the modern world, always ahead of codified norms, involve complex phenomena of growing societal independence which, inter alia, entail critical situations for the State's jurisdiction or non-recognition of its role.

157. It is precisely in this context, and taking advantage of it, that irregular armed groups or gangs of drug traffickers and mercenaries usually emerge. The activities of these groups, either separate or combined, are intrinsically unlawful and naturally opposed to the State, which these groups repudiate and combat and whose power they seek to usurp. Of course, there are situations in which opposition to the State may have a basis in history and in reality, but even in these cases it is unacceptable, as far as the enjoyment of human rights is concerned, for those who reject the State to intimidate populations, subjugate them through terror, commit cruel murders, mutilate and torture, engage in abductions or extortion or use the corrupting power of drug trafficking, to name some of the various practices which can definitely be attributed to irregular armed groups and gangs of drug traffickers or mercenaries which ravage and martyrize the populations of various countries. For all practical purposes, these populations have been removed from the authority of the State, deprived of its protection and prevented from exercising their most fundamental rights, both civil and political, under threat of being eliminated, tortured or stripped of their freedom or property.

158. Thus, not only do these irregular armed groups or gangs of drug traffickers or mercenaries commit acts that are contrary to international and national law but they must be branded as violators of human rights. While it could be argued that the precepts of international law are not applicable to these groups, this would be to overlook the fact that international law consists not only of treaty provisions but also of general principles and customary rules which both States and individuals are required to observe.

159. On the basis of this approach, the Special Rapporteur reviewed the complaints submitted to the Centre for Human Rights from such countries as El Salvador, Guatemala, Pakistan, Panama and Peru; he took account of the opinions expressed on the subject by countries such as Belgium and the Union of Soviet Socialist Republics and informed himself by his own means about the presence of irregular armed groups in Colombia and Chile, Spain, the Islamic Republic of Iran, the Philippines and Sri Lanka, and also about countries which are affected by drug trafficking: Colombia, Panama, Peru, the United States of America and States members of the European Community. Because of the subject of his report, he looked into the way in which mercenaries are also linked with or form irregular armed groups or work for drug traffickers, thus creating criminal associations with disastrous effects for the full enjoyment of human rights.

160. In all these cases it is the State and its institutions and existing legality that are called in question, but it can also be noted that it is the fundamental rights of individuals, particularly the poorer segments of society, that are directly attacked, in many cases with fatal consequences. The end can never justify the means, and all individuals, and not just States, are required to observe this universal principle. On the basis of this proposition and the sacred character of life, it is natural to call upon Governments to defend life, order and legality, without infringing or violating human rights. However, it is also natural that such defence involves a commitment by the community and international organizations, and that irregular armed groups and gangs of drug traffickers and mercenaries should therefore be condemned inasmuch as their activities have adverse effects on the enjoyment of human rights.

161. Lastly, it should be noted that many of the reports concerning the activities of irregular armed groups relate to situations where violence is practised with the aim of preventing entire populations from exercising the right to elect their authorities. To deny people this possibility is to violate a fundamental political right, which essentially is a basic human right, and at the same time creates disorder by generating a power vacuum that directly affects those same populations who are forcibly prevented from voting. In such situations, the international community ought to respond by affirming that these rights of peoples should be enjoyed without restriction and by making irregular armed groups realize that their activities warrant condemnation and repudiation.

IX. CONCLUSIONS

162. The trend towards détente and the settlement of armed conflicts continued during 1990, both in southern Africa and in Central America. Political agreements designed to end conflicts affecting the sovereignty of certain States and the self-determination of their peoples have been implemented, at least in part. Namibia in southern Africa and Nicaragua in Central America

may be identified as the best examples of countries where conflict has ceased, self-determination has been affirmed and sovereignty has been respected. Mercenary activity in those countries has also ceased.

163. While there is conclusive evidence of a trend towards the winding down or cessation of armed conflict in southern Africa and Central America, one must not infer that the process has been completed throughout those regions. In southern Africa, Angola and Mozambique are still beset by internal conflict involving armed resistance to their respective Governments; the presence of mercenary elements among rebel forces cannot be ruled out. In this regard, the assumption that there are mercenary resources available for use in military conflicts is correct; their involvement ceases when the conflict comes to an end and peace is restored in the country concerned. Attention must therefore be paid to the existence of groups organized for mercenary activity, and all States Members of the United Nations must take an interest in this matter so that their domestic legislation might prohibit any type of activity for the recruitment, training or use of mercenaries. In any event, it is encouraging that possibilities for dialogue between the Government of Angola and UNITA continue to exist and that in Mozambique a process of negotiations and cease-fire involving RENAMO has been initiated.

164. In the case of the Comoros, the mercenary attack in November/December 1989 was overcome and the new constitutional President has been elected. A further attempted mercenary attack in August 1990 was also repelled.

165. For many years the white minority Government of South Africa has been challenged at the national and international levels over its policy of apartheid. That country has now embarked on a review of the State's segregationist policy, a review accompanied by proposals for national reconciliation. The release of Nelson Mandela and other political prisoners, the legalization of ANC, the Communist Party of South Africa, the Pan Africanist Congress of Azania and other groups, and the beginning of a political dialogue, are tangible signs of an initiative that will succeed if there is genuine democratization with equal political and civil rights for all. The Special Rapporteur is following these developments, because the policy of apartheid has been one of the causes of mercenary activity inside and outside South Africa, mercenaries being among the illicit tools used in the acts of criminal repression against opponents of the segregationist system. It is precisely in the context of this new process of détente that the authorities are starting to admit and investigate cases (hitherto denied or hushed up) of repressive actions carried out by the police and criminals, with the participation of mercenaries.

166. Détente in South Africa does not mean that violence has ceased. President De Klerk's policy is being challenged by right-wing groups, which are rallying to resist any modification of the apartheid system. Their activities include the formation of paramilitary units, which have taken part in acts of violence in various parts of South Africa. A mercenary component in these right-wing paramilitary units cannot be ruled out. Another dangerous situation to which attention should be drawn is the violent urban clashes between ethnic groups of the black population.

167. On the basis of his visiting mission to Maldives, the Special Rapporteur has concluded that there was an attack on the capital of that country, Male, in November 1988, with the aim of installing a puppet régime under the leadership of a Maldivian national by the name of Luthufy. The attack was carried out in accordance with an agreement with the leaders of the Tamil organization People's Liberation Organization of Tamil Ealam (PLOTE), under which a Tamil guerrilla group from that organization was supposed to land and take Male. The attempt failed, but the capture of the fugitives on the high seas and the subsequent judicial proceedings confirmed the link between Maldivian nationals and PLOTE, and the Tamil component in the attack. Not only was funding provided for the expedition, but promises were made that islands would be handed over, some for Tamil military activity against the Government of Sri Lanka, and two to provide revenue from tourism.

168. In the light of the views expressed by Maldivian officials whom the Special Rapporteur interviewed, and statements by Tamil prisoners with whom he spoke, it seems that the responsibility of the Tamil guerrillas derives from their very participation in an act contrary to international law, but there is no evidence to justify describing them as mercenaries. Rather, these are Tamil youths whose bona fide militancy in an organization defending the Tamil cause in Sri Lanka was exploited so as to involve them in an act of aggression against a third country. They did not even know that that was the precise goal of the expedition which they were drawn into.

169. The conclusion regarding the leaders of the Tamil organization PLOTE is quite different. Whatever one's opinion of the policy and nature of the organization in Sri Lanka, a question outside the purview of the Special Rapporteur's mandate, the fact is that those leaders used their leadership position in order to receive money and weapons, putting their organization and military apparatus in the service of private interests in a third country. In addition, they accepted other inducements, such as the right to occupy certain Maldivian islands, as well as guarantees that they could be used as spring-boards for hostilities against Sri Lanka. Those leaders fit the profile of mercenaries and should be described as such.

170. Obviously the aggression against Maldives has highlighted its vulnerability and the risk that it might fall victim to similar attacks, given its proximity to Sri Lanka and to the ongoing conflict in Sri Lanka, and in view of Tamil activity against the Government of Sri Lanka. Another damaging result is that Maldives has been forced to strengthen its military machinery, diverting resources that should normally go towards improving public services and implementing development programmes. For the rest, the case of Maldives illustrates the type of risk faced by all small States that are strategically located or are close to areas of conflict. These are not countries that have or can afford large militaries, and as a result their sovereignty and the self-determination of their peoples are at risk.

171. The International Convention against the Recruitment, Use, Financing and Training of Mercenaries, adopted by the General Assembly in its resolution 44/34 of 4 December 1989, is open for signature by all States until 31 December 1990 and is subject to ratification and open for accession by any State. It is to enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations. So far, only two countries have completed the process signifying their consent to be bound by the

Convention, and a further eight have signed it. Given the importance and usefulness of this instrument for eliminating mercenary activities, it should be promoted among Member States and disseminated.

172. The Special Rapporteur continued to gather reliable information confirming the existence in Colombia of mercenary activities connected with drug trafficking. The conclusion to be drawn from reports in the Colombian and international press, investigations by the Administrative Security Department (DAS) and the relevant decisions of the organs of Colombian justice is that there has indeed been an active presence in that country of British and Israeli mercenaries hired by drug-trafficking gangs to provide them with military training in the use of explosives, criminal attacks and arms smuggling. These mercenary activities mostly occurred in 1988 and 1989.

173. The Special Rapporteur also fulfilled his mandate under Commission on Human Rights resolution 1990/75 relating to the consequences of acts of violence committed by irregular armed groups and drug traffickers for the enjoyment of human rights. An analysis of the material examined makes it clear that gangs of mercenaries, which are in themselves irregular armed groups, together with drug traffickers, engage in terrorist activities, atrocities and cruelty which prevent individuals and even entire populations from enjoying their fundamental human rights and the guarantees of such rights that must be granted by States. The seriousness of this situation is compounded in those verifiable cases in which such irregular armed groups, gangs of drug traffickers and mercenaries accumulate enormous military and economic power and corrupting influence, carrying out activities contrary to the exercise of the right of peoples to self-determination and State sovereignty and calculated to destabilize legitimate constitutional Governments.

X. RECOMMENDATIONS

174. On the basis of the information received by the Special Rapporteur, the analysis undertaken and the conclusions formulated in chapter IX above, the following recommendations are presented.

175. In keeping with the United Nations policy of condemning and rejecting mercenary activities, and bearing in mind that there are various ways of supplying mercenaries and that there is reliable evidence that they have been used in recent conflicts by certain parties against others, the Special Rapporteur recommends that the reiteration of the United Nations position of principle against mercenary activities should be accompanied by specific provisions and agreements to ensure that both international law and the domestic legislation of each country prevent, criminalize and punish as unlawful acts the supply and sale, in the territory of a State, of services for the recruitment of mercenaries; such supply and sale must intrinsically be considered an offence.

176. As part of an international policy of prevention, it is recommended that the Commission on Human Rights suggest to member States that they include in their domestic legislation provisions defining the recruitment of mercenaries as an offence. In addition, States should regard as aggravating factors the training of mercenaries in their territory and the involvement of mercenaries in concurrent acts such as trafficking in arms, drugs and currency. Lastly, States should facilitate extradition when their nationals are sought by a

victim State on the basis of their proven involvement in mercenary acts against the self-determination of its people, its sovereignty and the constitutional stability of its Government.

177. Bearing in mind the nature of mercenary activity and the policy established in this area by resolutions of the Commission on Human Rights and the General Assembly, the Special Rapporteur recommends reiteration of the position that mercenary activities should be condemned and punished both with respect to the mercenary directly involved and with respect to those using mercenaries and the entity or individual recruiting and training mercenaries, at the request of third parties, to commit acts against international law.

178. Having regard to General Assembly resolution 44/51 of 8 December 1989 on the protection and security of small States, and noting that indeed small States such as Maldives and the Comoros have recently been attacked by groups of mercenaries attempting to infringe upon their sovereignty and territorial integrity, the Special Rapporteur sees merit in recognizing the fact that small States, because of their size, their strategic location or their proximity to areas of conflict, may be particularly vulnerable to external threats and acts of interference in their internal affairs. It would therefore be useful to underscore the obligation to respect the territorial integrity of all States and to aid small States in cases where they request assistance from international or regional organizations or from another State on a bilateral basis, and there is a tangible threat to their sovereignty, territorial integrity and security as a result of acts contrary to international law and to the purposes and principles of the Charter of the United Nations and their own Constitution.

179. With a view to reinforcing the principle of preventing mercenary activities, the principle of respect for the sovereignty of States and the principle of non-interference in internal affairs, the Special Rapporteur sees merit in pointing out that these principles also embody the prohibition of indirect intervention, covert operations or assistance to a party to a conflict that is rebelling against the authority of a legitimate, constitutional Government. This recommendation also calls for a declaration that it is incompatible with the principles of the Charter to use programmes of humanitarian or other assistance in any way that would provide a cover for concrete activities involving the financing, training and use of mercenaries.

180. With respect to the military conflict in Angola, it should be noted that the accession of Namibia to independence and the peace agreement with South Africa have eased the situation in Angola and reduced the number of war fronts. Nevertheless, inasmuch as the internal conflict is still going on because of the continuation of hostilities on the part of UNITA guerrillas, and the use of mercenaries by UNITA, it is recommended that encouragement be given to the process of national reconciliation in Angola and to the Government's suggestions for clemency and democratization, as a means towards political negotiation designed to put an end to the internal military conflict and make peace a fact of life for Angolans. By the same token, the Special Rapporteur sees merit in adopting appropriate proposals for the termination of the military and financial assistance which UNITA receives from the outside, for that would create a climate conducive to effective negotiation and political dialogue.

181. A recommendation along the same lines is offered with regard to similar conflicts in southern Africa, particularly Mozambique, where proposals for national reconciliation, internal democratization and the termination of external military assistance to guerrilla rebels who have mercenaries in their ranks are prerequisites for the restoration of peace and the full exercise of self-determination by its people. In this connection, it is also recommended that support should be given to the peace negotiations recently initiated between the Government of Mozambique and RENAMO, as well as to the international cease-fire verification commission.

182. The recent mercenary activity in the Comoros has again highlighted the fact that shady interests are at work and hostile acts are being committed against the self-determination and stability of Governments in that part of Africa. There was a further attempted attack in August 1990. Another serious matter is that the mercenary aggressors who fled from the Comoros have not yet been brought to justice. It is therefore recommended that the Commission on Human Rights provide effective guarantees to the Comoros in defence of the self-determination of its people and its sovereignty, and demand real and effective punishment for the mercenaries who perpetrated the attack. Everybody knows who they are.

183. With regard to the process now under way in South Africa, it is recommended that there be explicit support for sweeping political and social reforms in that country, so that there might be a definitive end to the apartheid system, recognition of the equal rights of all and full participation by the black population in all aspects of the country's political, social, economic and cultural life. Moreover, inasmuch as the use of mercenaries has been directly linked to the policy of apartheid and the acts of criminal repression against opponents of apartheid, it is recommended that the protection being given to the mercenaries in South Africa should cease, that they should be tried for their participation in criminal acts, and that paramilitary mercenary units working for right-wing groups violently opposed to the political reforms in South Africa should be banned. It is also recommended that the Commission should call for an end to violence and for harmony among the various ethnic groups in South Africa.

184. Having noted the mercenary attack on Maldives in November 1988 and the vulnerability of that small State, the Special Rapporteur sees merit in reiterating solidarity with Maldives, expressing support for its sovereign rights, and condemning the attack and any further attempt to attack it or draw it into the internal conflict in another country of the region.

185. Having noted, too, that in the attack on Maldives a mercenary role was played by the Tamil organization People's Liberation Organization of Tamil Ealam (PLOTE), which is waging an armed struggle against the Government of Sri Lanka, the Special Rapporteur sees merit in pointing out, without going into the question of the legitimacy of that rebellion, that even where a national group is engaged in acts of rebellion and protest in the territory of its country, the leadership of such a group is in no way authorized to use (but rather may be condemned for using) the military capability of the organization so as to divert it from its purported national objectives and embroil it in hostilities against a third country. The introduction of a mercenary element into the group or organization is an aggravating factor.

186. Nevertheless, as was demonstrated in the attack on Maldives, mercenarism on the part of the leadership does not necessarily mean mercenarism on the part of all the members of an organization. Rather, the evidence in the case of Maldives suggests that those who carried out the attack were surprised, were used because they were PLOTE militants, and were not even aware that they were being drawn into hostilities having nothing to do with their national cause and in violation of international law. This should be taken into account by the Maldivian authorities in considering the possibility of granting amnesty and giving the Tamil youths now in custody the option to start a new life in Maldives itself or return home.

187. As for Central America, the conflict of the 1980s has virtually been resolved as far as one of the greatest hotbeds of tension (Nicaragua) is concerned. But this is not the case in El Salvador, where the armed conflict continues despite the ongoing process of dialogue and negotiation. In this connection, it is recommended that the United Nations maintain its presence in the region through CIAV and ONUCA, with a view to contributing to the success of the demobilization and peace process throughout Central America. In this way, the countries of the region would achieve political stability, democratic régimes would be consolidated, and acts of intervention which in the past provided a framework for mercenary operations would be averted.

188. With regard to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, it is recommended that the Commission should urge all States to consider ratifying or acceding to that instrument. Bringing the Convention into force will be a real and effective step forward in eliminating mercenary activities and will make it easier for States to classify such activities as a crime under their internal law.

189. On the basis of the reports he has received concerning the situation in Colombia, the Special Rapporteur recommends that the Commission should express its support for the efforts being made by the Colombian State to resolve the serious problems created by drug-trafficking violence and the armed gangs of drug traffickers trained by foreign mercenaries. This recommendation should also apply to all ongoing actions and efforts in that country to restore peace and strengthen democracy.

190. With regard to Commission on Human Rights resolution 1990/75 concerning the consequences of acts of violence committed by irregular armed groups and drug traffickers for the enjoyment of human rights, the Special Rapporteur has reflected on the matter and reviewed the large numbers of reports that have been submitted on cases involving actions by these groups, whose effects are detrimental to the enjoyment of fundamental civil, political, economic and social rights. Given the importance of the subject, the Special Rapporteur recommends that the Commission should continue to deal with it as a matter of high priority and should study it in greater depth with a view to formulating a conceptual framework that could be applied juridically and would be useful in ensuring the effective protection and defence of individuals and populations whose fundamental human rights are being violated by these irregular armed groups and drug traffickers and in preventing, condemning and punishing their unlawful, criminal activities.
